

JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JOSHUA DA SILVA, by and through his parents and legal guardians
ANDREZA LOPEZ DASILVA and JOSE DASILVA

(b) County of Residence of First Listed Plaintiff Philadelphia

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Joseph L. Messa, Jr., Esq./Megan M. Kwak, Esq.

MESSA & ASSOCIATES, P.C.

123 S. 22nd Street - Philadelphia, PA 19103 - (215) 568-3500

DEFENDANTS

CLINTON TURNER, TEMPLE UNIVERSITY HOSPITAL, INC., ET AL.

County of Residence of First Listed Defendant Philadelphia, PA

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Colin M. Cherico/Elizabeth L. Coyne, AUSAs {for Clinton Turner /US}

615 Chestnut Street, Suite 1250, Philadelphia, PA 19106

James A. Young, Esq. {for Temple Defendants}, Christie & Young, PC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff

☐ 3 Federal Question
(U.S. Government Not a Party)

☒ 2 U.S. Government Defendant

☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input checked="" type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

☐ 1 Original Proceeding

☒ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from Another District (specify)

☐ 6 Multidistrict Litigation - Transfer

☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C Section 233

Brief description of cause:
Medical Malpractice of Deemed Federal Employees

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Eduardo C. Robreno

DOCKET NUMBER 19-4111

DATE 3/12/2020

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

JOSHUA DA SILVA, by and through his parents and
legal guardians, ANDREZA LOPEZ DASILVIA and
JOSE DASILVIA v.

CIVIL ACTION

TEMPLE UNIVERSITY HOSPITAL, et al.

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

<u>3/12/2020</u> Date	<u>Elizabeth L. Coyne</u> Attorney-at-law	<u>United States of America</u> Attorney for
<u>215-861-8447</u> Telephone	<u>215-861-8618</u> FAX Number	<u>elizabeth.coyne@usdoj.gov</u> E-Mail Address

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 3305 Oakmont Street, Philadelphia, PA 19136
 Address of Defendant: 3401 North Broad Street, Philadelphia, PA 19140
 Place of Accident, Incident or Transaction: Temple University Hospital

RELATED CASE, IF ANY:

Case Number: 19-4111 Judge: Eduard C. Robreno Date Terminated: 10/24/2019

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|---|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☒ **is** / ☐ **is not** related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 3/12/2020 [Signature] Must sign here 322641
 Attorney-at-Law / Pro Se Plaintiff Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
☐ 2. FELA
☐ 3. Jones Act-Personal Injury
☐ 4. Antitrust
☐ 5. Patent
☐ 6. Labor-Management Relations
☐ 7. Civil Rights
☐ 8. Habeas Corpus
☐ 9. Securities Act(s) Cases
☐ 10. Social Security Review Cases
☒ 11. All other Federal Question Cases
 (Please specify): 42 U.S.C. Section 233

B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
☐ 2. Airplane Personal Injury
☐ 3. Assault, Defamation
☐ 4. Marine Personal Injury
☐ 5. Motor Vehicle Personal Injury
☐ 6. Other Personal Injury (Please specify): _____
☐ 7. Products Liability
☐ 8. Products Liability – Asbestos
☐ 9. All other Diversity Cases
 (Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Elizabeth E. Coyne, counsel of record or pro se plaintiff, do hereby certify:

- ☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
☐ Relief other than monetary damages is sought.

DATE: 3/12/2020 [Signature] Sign here if applicable 322641
 Attorney-at-Law / Pro Se Plaintiff Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSHUA DA SILVA, by and through his
parents and legal guardians, ANDRÉZA
LOPEZ DASILVA and JOSE DASILVA

Plaintiffs,

vs.

TEMPLE UNIVERSITY HOSPITAL, INC.,
a/k/a d/b/a TEMPLE UNIVERSITY
HOSPITAL; TEMPLE UNIVERSITY
HEALTH SYSTEM, INC.; TEMPLE
UNIVERSITY HOSPITAL DEPARTMENT
OF OBSTETRICS, GYNECOLOGY;
SAMANTHA JAGANNATHAN, M.D.;
SARAH MARTIN, M.D.; AND MICAELA
FERNANDES, R.N.

Defendants.

CIVIL ACTION NO.

NOTICE OF REMOVAL

Under 42 U.S.C. § 233, the United States of America, on behalf of additional defendant Clinton A. Turner, M.D., removes this action from the Court of Common Pleas for Philadelphia County, Pennsylvania, to the United States District Court for the Eastern District of Pennsylvania. In support, the United States avers as follows:

1. On December 17, 2019, plaintiff J.D. and his parents and legal guardians, Andreza Lopez DaSilva and Jose DaSilva commenced this action by filing a complaint in the Court of Common Pleas of Philadelphia County, naming as defendants: Temple University Hospital, Inc., a/k/a Temple University Hospital; Temple University Health System, Inc.; Temple University Hospital Department of Obstetrics, Gynecology; Samantha Jagannathan, M.D.; Sarah Martin, M.D.; and Micaela Fernandes, R.N. *See* Exhibit 1.

2. On January 17, 2020, the Temple Defendants filed a joinder complaint adding Clinton A. Turner, M.D. as an additional defendant and asserting that, if the Temple Defendants

are found to be liable for the plaintiffs' alleged injuries, Dr. Turner is either solely liable to the plaintiffs or jointly and/or severally liable with the Temple Defendants. *See* Exhibit 2, ¶¶ 6–7.

3. By operation of the Federally Supported Health Centers Act, 42 U.S.C. § 233(c), defendant Clinton A. Turner, M.D. is deemed a federal employee of the United States Public Health Service for purposes of the claims asserted against him in this matter, and covered by the remedy and certain procedures of the Federal Tort Claims Act, which provides the exclusive remedy for state-law tort actions brought against individuals or entities deemed to be federal employees acting within the scope of their employment. *See* 42 U.S.C. §§ 233(a), 233(g).

4. Actions brought under the Federal Tort Claims Act, as incorporated into the Federally Supported Health Centers Act, *see* 42 U.S.C. §§ 233(a) and (c), may only be brought in federal district court. *See id.*; *see also* 28 U.S.C. § 1346. Therefore, this action must be removed to federal district court.¹

5. No bond is required as this notice is filed by the United States. *See* 42 U.S.C. § 233(c).

6. A certified copy of this Notice of Removal will be filed in the Office of Judicial Support of the Court of Common Pleas of Philadelphia County, and sent to all parties.

7. Removal is timely under 42 U.S.C. § 233(c), which provides that a civil action of this nature may be removed at any time before trial.

8. Once removed, the United States will move to dismiss Clinton A. Turner, M.D. as a defendant and substitute the United States of America pursuant to 42 U.S.C. § 233(g). The United States will then move to stay this action until Plaintiffs exhaust their administrative claim.

¹ This action is related to a previous action that was also removed to this Court. *See Da Silva v. Temple University Hospital, Inc. et al.*, No. 2:19-cv-4111 (E.D. Pa.) (Robreno, J.). The previous action was dismissed without prejudice so that Plaintiffs could exhaust their administrative remedies against the United States of America. *See* Order Granting Plaintiffs' Motion for Voluntary Dismissal, *Da Silva v. Temple University Hospital, Inc. et al.*, No. 19-cv-4111, ECF No. 5 (E.D. Pa. Oct. 25, 2019). Plaintiffs' subsequent administrative claim is still pending. The United States of America has marked this removed action as related to Civil Action 19-4111 and requests that it be assigned to Judge Robreno.

WHEREFORE, under 42 U.S.C. § 233, the United States of America respectfully removes this action from state court to this Court.

Respectfully submitted,

WILLIAM M. McSWAIN
United States Attorney


GREGORY B. DAVID
Assistant United States Attorney
Chief, Civil Division


COLIN M. CHERICO
ELIZABETH L. COYNE
Assistant United States Attorneys
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106
Tel: (215) 861-8788/8447
Fax: (215) 861-8618
Email: colin.cherico@usdoj.gov
elizabeth.coyne@usdoj.gov

Dated: March 12, 2020

CERTIFICATE OF SERVICE

I certify that on this date, I filed the foregoing Notice of Removal with the Court and served a copy by first-class mail upon the following:

Joseph L. Messa, Jr., Esquire
Megan M. Kwak, Esquire
MESSA & ASSOCIATES, P.C.
123 South 22nd Street
Philadelphia, PA 19103

Counsel for Plaintiffs

James A. Young, Esquire
Richard S. Margulies, Esquire
Adrianna M. Yanez, Esquire
BURNS WHITE
1880 JFK Boulevard, 10th Floor
Philadelphia, PA 19103

*Counsel for Defendant Temple University
Hospital, Inc., a/k/a Temple University
Hospital; Temple University Health System,
Inc.; Temple University Hospital Department
of Obstetrics, Gynecology; Samantha
Jagannathan, M.D.; Sarah Martin, M.D.; and
Micaela Fernandes, R.N.*

Dated: March 12, 2020


ELIZABETH L. COYNE
Assistant United States Attorney

EXHIBIT 1

Court of Common Pleas of Philadelphia County
Trial Division
Civil Cover Sheet

		For Prothonotary Use Only (Docket Number)	
		DECEMBER 2019 E-Filed Number: 1912017287 001095	
PLAINTIFF'S NAME ANDREZA L. DASILVA		DEFENDANT'S NAME TEMPLE UNIVERSITY HOSPITAL, INC., ALIAS: TEMPLE UNIVERSITY HOSPITAL	
PLAINTIFF'S ADDRESS 3305 OAKMONT STREET PHILADELPHIA PA 19136		DEFENDANT'S ADDRESS 3401 NORTH BROAD STREET PHILADELPHIA PA 19140	
PLAINTIFF'S NAME JOSE DASILVA		DEFENDANT'S NAME TEMPLE UNIVERSITY HEALTH SYSTEM, INC.	
PLAINTIFF'S ADDRESS 3305 OAKMONT STREET PHILADELPHIA PA 19136		DEFENDANT'S ADDRESS 3401 NORTH BROAD STREET PHILADELPHIA PA 19140	
PLAINTIFF'S NAME		DEFENDANT'S NAME TEMPLE UNIVERSITY HOSP. DEPARTMENT OF OBSTETRICS, GYNECOLOGY	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS 3401 NORTH BROAD STREET PHILADELPHIA PA 19140	
TOTAL NUMBER OF PLAINTIFFS 2	TOTAL NUMBER OF DEFENDANTS 6	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions	
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Mass Tort <input type="checkbox"/> Commerce <input type="checkbox"/> Settlement <input checked="" type="checkbox"/> Jury <input type="checkbox"/> Savings Action <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Minors <input type="checkbox"/> Non-Jury <input type="checkbox"/> Petition <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> W/D/Survival <input type="checkbox"/> Other:		
CASE TYPE AND CODE 2M - MALPRACTICE - MEDICAL			
STATUTORY BASIS FOR CAUSE OF ACTION			
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)		IS CASE SUBJECT TO COORDINATION ORDER? YES NO	
		FILED PRO PROTHY DEC 06 2019 A. SILIGRINI	
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: <u>ANDREZA L DASILVA , JOSE DASILVA</u> Papers may be served at the address set forth below.			
NAME OF PLAINTIFFS/PETITIONER'S/APPELLANT'S ATTORNEY JOSEPH L. MESSA JR		ADDRESS MESSA & ASSOCIATES PC 123 SOUTH 22ND STREET PHILADELPHIA PA 19103	
PHONE NUMBER (215) 568-3500	FAX NUMBER (215) 568-3501		
SUPREME COURT IDENTIFICATION NO. 53645		E-MAIL ADDRESS JMessa@Messalaw.com	
SIGNATURE OF FILING ATTORNEY OR PARTY JOSEPH MESSA JR		DATE SUBMITTED Friday, December 06, 2019, 12:23 pm	

5

COMPLETE LIST OF DEFENDANTS:

1. TEMPLE UNIVERSITY HOSPITAL, INC. - accepted re 12/17/19
ALIAS: TEMPLE UNIVERSITY HOSPITAL
3401 NORTH BROAD STREET
PHILADELPHIA PA 19140
2. TEMPLE UNIVERSITY HEALTH SYSTEM, INC. - accepted re 12/17/19
3401 NORTH BROAD STREET
PHILADELPHIA PA 19140
3. TEMPLE UNIVERSITY HOSP. DEPARTMENT OF OBSTETRICS, GYNECOLOGY - accepted re 12/17/19
3401 NORTH BROAD STREET
PHILADELPHIA PA 19140
4. SAMANTHA JAGANNATHAN, M.D. - accepted re 12/17/19
3401 NORTH BROAD STREET
PHILADELPHIA PA 19140
5. SARAH MARTIN, M.D. - refused re 12/17/19
3401 NORTH BROAD STREET
PHILADELPHIA PA 19140
6. MICAELA FERNANDEZ, R.N. - accepted re 12/17/19
3401 NORTH BROAD STREET
PHILADELPHIA PA 19140

MESSA & ASSOCIATES, P.C.
 By: Joseph L. Messa, Jr., Esquire
 Megan M. Kwak, Esquire
 Attorney I.D. Nos.: 53645/313946
 123 South 22nd Street
 Philadelphia, Pa. 19103
 (215) 568-3500 / Fax: (215) 568-3501

Attorneys for Plaintiff and Accepted by the
 Office of Judicial Records
 THIS IS NOT AN ADVERTISEMENT
 CASE ASSESSMENT
 DAMAGES HEARING IS
 REQUIRED. MAJOR JURY.

JOSHUA DA SILVA, by and through his
 parents and legal guardians, **ANDREZA
 LOPEZ DASILVA** and **JOSE DASILVA**,

Plaintiffs

vs.

**TEMPLE UNIVERSITY HOSPITAL, INC.,
 a/k/a d/b/a TEMPLE UNIVERSITY
 HOSPITAL; TEMPLE UNIVERSITY
 HEALTH SYSTEM, INC.; TEMPLE
 UNIVERSITY HOSPITAL DEPARTMENT OF
 OBSTETRICS, GYNECOLOGY; SAMANTHA
 JAGANNATHAN, M.D.; SARAH MARTIN,
 M.D.; AND MICAELA FERNANDES, R.N.,**

Defendants.

**PHILADELPHIA COUNTY
 COURT OF COMMON PLEAS**

DECEMBER TERM, 2019

No. _____

**CIVIL ACTION COMPLAINT
 2M – PROFESSIONAL MEDICAL MALPRACTICE
 NOTICE TO DEFEND**

"NOTICE"

"You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

"YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP."

Philadelphia Bar Association
 Lawyer Referral
 and Information Service
 One Reading Center
 Philadelphia, PA 19107
 (215) 238-6333
 TTY (215) 451-6187

"AVISO"

"Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

"LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL."

Asociación de Licenciados
 de Filadelfia
 Servicio de Referencia e
 Información Legal
 One Reading Center
 Philadelphia, PA 19107
 (215) 238-6333
 TTY (215) 451-6187

MESSA & ASSOCIATES, P.C.
By: Joseph L. Messa, Jr., Esquire
Megan M. Kwak, Esquire
Attorney I.D. Nos.: 53645/313946
123 South 22nd Street
Philadelphia, Pa. 19103
(215) 568-3500 / Fax: (215) 568-3501

Attorneys for Plaintiff

**THIS IS NOT AN ARBITRATION
CASE. ASSESSMENT OF
DAMAGES HEARING IS
REQUIRED. MAJOR JURY.**

**JOSHUA DA SILVA, by and through his
parents and legal guardians, ANDREZA
LOPEZ DASILVA and JOSE DASILVA**

Plaintiffs,

vs.

TEMPLE UNIVERSITY HOSPITAL, INC.
a/k/a d/b/a **TEMPLE UNIVERSITY
HOSPITAL**
3401 N. Broad St.
Philadelphia, PA 19140

-and-

**TEMPLE UNIVERSITY HEALTH
SYSTEM, INC.**
3401 N. Broad St.
Philadelphia, PA 19140

-and-

**TEMPLE UNIVERSITY HOSPITAL
DEPARTMENT OF OBSTETRICS,
GYNECOLOGY**
3401 N. Broad St.
Philadelphia, PA 19140

-and-

SAMANTHA JAGANNATHAN, M.D.
3401 N. Broad St.
Philadelphia, PA 19140

-and-

**PHILADELPHIA COUNTY
COURT OF COMMON PLEAS**

DECEMBER TERM, 2019

No. _____

SARAH MARTIN, M.D.
3401 N. Broad St.
Philadelphia, PA 19140

-and-

MICAELA FERNANDES, R.N.
3401 N. Broad St.
Philadelphia, PA 19140

Defendants.

PLAINTIFFS' COMPLAINT
2M – PROFESSIONAL MEDICAL MALPRACTICE

Plaintiffs, Andreza Lopez DaSilva and Jose DaSilva, individually and on behalf of their son Joshua DaSilva, a minor, by and through their attorneys, Messa & Associates, P.C., bring the following Amended Complaint, and in support thereof aver as follows:

INTRODUCTION

1. On December 13, 2017, Plaintiffs were anxiously anticipating the birth of their fourth child, when they presented to Temple University Hospital for a scheduled C-section.
2. Mrs. Lopez DaSilva came under the care of Dr. Turner, Dr. Saperstein, and Nurse Fernandes.
3. When Plaintiffs presented to Labor and Delivery, there was evidence of a live, well-oxygenated fetus.
4. At approximately 3:30 p.m., during the placement of an IV by Nurse Fernandes, there was evidence of a prolonged 4-minute deceleration of Baby Joshua's heart rate to as low as 60 bpm.
5. Subsequently, Baby Joshua's heart rate recovered, and the electronic fetal monitor documented a Category I fetal heart tracing up until 5:43 p.m.

6. Sometime just before 5:48 p.m., Mrs. Lopez DaSilva was taken to the operating room for a repeat C-section.

7. At approximately 6:03 p.m., shortly after the administration of spinal anesthesia in the operating room, Defendants documented that Baby Joshua's heart rate dropped to a dangerously low bradycardic level of 60 beats per minute ("bpm").

8. By 6:05 p.m., Defendants could not detect Baby Joshua's heart rate at all.

9. Despite the evidence of fetal distress, and even though Mrs. Lopez DaSilva had been in the hospital for more than three (3) hours and there had been a prior bradycardic episode at approximately 3:30 p.m. that should have put Defendants on notice of a potential issue, and notwithstanding the fact Mrs. Lopez DaSilva was already in the operating room and anesthetized for her scheduled C-section, Defendants inexplicably delayed delivery for more than ten minutes and failed to take emergent action to get Baby Joshua out.

10. Finally, at 6:17 p.m., Baby Joshua was delivered.

11. But it was too late.

12. At delivery, Baby Joshua's lifeless body was flaccid and blue.

13. His initial heart rate was bradycardic at 64 bpm.

14. Baby Joshua's APGAR scores were 1 at one minute, 2 at five minutes, 2 at ten minutes, 2 at fifteen minutes, and 2 at twenty minutes.

15. He was emergently transferred to the NICU, where he underwent resuscitation and intubation before being transferred to St. Christopher's Hospital for Children for further evaluation and treatment.

16. Baby Joshua's injuries were the direct consequence of Defendants' failure to act promptly and emergently deliver Baby Joshua via C-section in the face of evident fetal distress.

17. Defendants' unfathomable decision to delay delivery for nearly 15 minutes needlessly deprived Baby Joshua's brain of oxygen.

18. Defendants' dangerous decision to delay delivery led to Baby Joshua's severe and permanent injuries.

19. Through this action, Plaintiffs Andreza Lopez DaSilva and Jose DaSilva seek compensatory and punitive damages on behalf of their minor son, Joshua DaSilva, who sustained severe, permanent, and profoundly disabling injuries at birth due to Defendants' failure to promptly deliver him in the face of evident fetal distress.

PARTIES

20. Plaintiffs **Andreza Lopez DaSilva and Jose DaSilva** are the parents and natural guardians of Joshua DaSilva, a minor, and reside at 3305 Oakmont Street, Philadelphia, PA 19136.

21. Defendant, **Temple University Hospital, Inc. a/k/a d/b/a Temple University Hospital ("TUH")**, is a Pennsylvania corporation, partnership, and/or other entity which provides training and instruction to medical students, interns, residents and fellows at Temple University Hospital operating and existing in accordance with the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 3401 N. Broad Street, Philadelphia, PA 19140.

22. At all relevant and material times, TUH acted by and through its directors, officers, shareholders, employees, physicians, nurses, staff members and/or its agents who were acting within the course and scope of their agency and/or within the right of its control, including the other named defendants herein and the physicians, residents, nurses and other staff responsible for the care and treatment of Joshua DaSilva on December 13, 2017.

23. At all relevant and material times, TUH was and is vicariously liable and/or ostensibly liable for the acts and/or omissions of its directors, officers, employees, physicians, nurses, staff members and/or its agents who were acting within the course and scope of its agency and/or within its right of control including, but not limited to Dr. Jagannathan, Dr. Martin, and Nurse Fernandes.

24. Plaintiffs are asserting professional liability and corporate negligence claims against TUH.

25. Defendant, Temple University Health System, Inc., is a Pennsylvania corporation, partnership, and/or other entity which provides training and instruction to medical students, interns, residents and fellows at Temple University Hospital operating and existing in accordance with the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 3401 N. Broad Street, Philadelphia, PA 19140.

26. At all relevant and material times, Temple University Health System, Inc., acted by and through its directors, officers, shareholders, employees, physicians, nurses, staff members and/or its agents who were acting within the course and scope of their agency and/or within the right of its control, including the other named defendants herein and the physicians, residents, nurses and other staff responsible for the care and treatment of Joshua DaSilva on December 13, 2017.

27. At all relevant and material times, Temple University Health System, Inc. was and is vicariously liable and/or ostensibly liable for the acts and/or omissions of its directors, officers, employees, physicians, nurses, staff members and/or its agents who were acting within the course and scope of its agency and/or within its right of control including, but not limited to Dr. Jagannathan, Dr. Martin, and Nurse Fernandes.

28. Plaintiffs are asserting professional liability and corporate negligence claims against Temple University Health System, Inc.

29. Defendant, **Temple University Hospital Department of Obstetrics & Gynecology**, is and was at all times relevant and material hereto, a Pennsylvania corporation, partnership, and/or other entity, organized and existing under the laws of the Commonwealth of Pennsylvania, engaged in the provision of medical and health care services with a principal place of business located at 3401 N. Broad Street, Philadelphia, PA 19140.

30. At all times relevant and material hereto Defendant, Temple University Hospital Department of Obstetrics & Gynecology, acted individually and/or by and through its agents, ostensible agents, staff, employees, residents, physicians, fellows, medical students, including Dr. Jagannathan, Dr. Martin, and Nurse Fernandes, and/or contractors who were acting with actual or implied authority to act within the course and scope of their employment and/or agency or ostensible agency relationship and the scope of their authority in the furtherance of the business and practice of Temple University Hospital Department of Obstetrics & Gynecology.

31. Plaintiffs are asserting a professional liability claim against Temple University Hospital Department of Obstetrics & Gynecology.

32. Defendant, **Samantha Jagannathan, M.D. ("Dr. Jagannathan")** is a physician who was licensed to practice medicine in the Commonwealth of Pennsylvania, having a regular place of business located at 3401 N. Broad Street, Philadelphia, PA 19140.

33. At all times relevant and material hereto, Dr. Jagannathan held herself out as a specialist in the field of Obstetrics and Gynecology and was engaged in the practice of his profession at TUH. At all times material hereto, Dr. Jagannathan was the agent, servant, employee

and/or ostensible agent of TUH, Temple University Health System, Inc., and/or Temple University Hospital Department of Obstetrics & Gynecology.

34. Plaintiffs are asserting a professional liability claim against Dr. Jagannathan.

35. Defendant, **Sarah Martin, M.D. ("Dr. Martin")** is a physician who was licensed to practice medicine in the Commonwealth of Pennsylvania, having a regular place of business located at 3401 N. Broad Street, Philadelphia, PA 19140.

36. At all times relevant and material hereto, Dr. Martin held herself out as a specialist in the field of Obstetrics and Gynecology and was engaged in the practice of his profession at TUH. At all times material hereto, Dr. Martin was the agent, servant, employee and/or ostensible agent of TUH, Temple University Health System, Inc., and/or Temple University Hospital Department of Obstetrics & Gynecology.

37. Plaintiffs are asserting a professional liability claim against Dr. Martin.

38. Defendant, **Micaela Fernandes, R.N.**, at all times relevant and material hereto, was a member of the Nursing staff of Defendant TUH who provided nursing care to Andreza Lopez DaSilva and Joshua DaSilva at Defendant TUH.

39. At all times relevant and material hereto, Defendant, Nurse Fernandes was an agent, employee, servant, workman, staff member, resident and/or ostensible agent of Defendant TUH, Temple University Health System, Inc., and/or Temple University Hospital Department of Obstetrics & Gynecology.

40. At all relevant and material times hereto, Andreza Lopez DaSilva and Joshua DaSilva were patients of Defendants.

41. An appropriate licensed professional has concluded that the care, skill, or knowledge exhibited by the Defendants, jointly and/or severally, deviated from or fell outside

professional standard and that such conduct was a substantial factor or increased the risk of harm to Plaintiffs. Certificates of Merit against the Defendants are attached collectively hereto as **Exhibit A.**

FACTUAL ALLEGATIONS

42. Plaintiffs hereby incorporate all paragraphs of this Complaint as through fully set forth at length herein.

43. On December 13, 2017, at approximately 3:00 p.m., Plaintiffs presented to TUH for a scheduled C-section of their fourth child, Joshua DaSilva.

44. At the time of her presentation, Mrs. Lopez DaSilva came under the care of Dr. Turner, the attending physician, Dr. Saperstein, a resident, and Nurse Fernandes.

45. During the placement of an IV at approximately 3:30 p.m. by Nurse Fernandes, there was evidence of a prolonged 4-minute deceleration of Baby Joshua's heart rate to as low as 60 bpm.

46. At approximately 4:00 p.m., Dr. Saperstein documented the incident as follows:

History of Present Illness

25 y.o. G4P3003@ 39w0d by 9w5d us admitted for repeat c-section. Patient reports good fetal movement. Denies vaginal bleeding, loss of fluid or contractions. Denies HA, visual changes or RUQ pain.

While being admitted and having IV drawn, patient had 4-minute fetal heart deceleration to the 60s, with spontaneous return to baseline with after repositioning. Patient at the time was lying down and started to feel warm but not lightheaded or dizzy.

47. Nurse Fernandes documented the incident in her nursing note, stating:

Attempted to place peripheral IV while patient lying on back with HOB at 30 degrees, placed spotlight on patient for better visualization, patient became tachycardic and diaphoretic. Loss of signal with FHR tracing and then prolonged FHR deceleration to 60. Patient's blood pressure within normal limits. Cousin at the bedside translating. Patient denied feeling dizzy and denied feeling like she was going to pass out. Patient rolled to right side and then left side, oxygen mask 10

liters placed. FHR returned to baseline. Dr. Saperstein at bedside. Dr. Turner made aware of event. Will start an IV NS fluid bolus. Will continue to monitor.

48. Dr. Turner further documented in his Attending Attestation note at 5:56 p.m. the following:

I saw and examined the patient and agree with the resident's note. 25 y.o. G4P3003 @ 39w0d by 9w5d us [sic] admitted for repeat c-section, BTL. OB history pertinent for SVD x 1 and C/S x 2. Patient reports good fetal movement. Denies vaginal bleeding, loss of fluid or contractions. Uncomplicated AP course. +vagal episode during IV placement. With associated fetal decel. That resolved [sic] with position change, IV hydration, and 02. Now with FHT's 150's/ cat. 1 tracing.

49. Subsequently, the electronic fetal monitor documented a Category I fetal heart tracing up until approximately 5:43 p.m.

50. Sometime just before 5:48 p.m., Defendants transported Mrs. Lopez DaSilva to the operating room for a repeat C-section.

51. Dr. Turner performed the C-section.

52. Dr. Jagannathan assisted Dr. Turner.

53. Nurse Fernandes was also present in the operating room at the time of the C-section.

54. At 5:58 p.m., Drs. Koers and Ligouri performed the insertion of spinal anesthesia without complication.

55. Prior to the administration of spinal anesthesia, Dr. Turner documented fetal heart tracings in the 130s.

56. Following the administration of the spinal anesthesia, Dr. Turner again documented fetal heart tracings in the 130s.

57. At 6:03 p.m., the anesthesia team reported "Anesthesia ready."

58. Shortly after 6:04 p.m., however, Dr. Turner noted that there was a spontaneous deceleration in which the fetal heart rate fell to a bradycardic level of as low as 60 bpm with a

small increase to the 80 bpm before subsequently becoming undetectable.

59. Defendants then inexplicably attempted to search for the fetal heart rate using an ultrasound wand despite the prior bradycardic event, the fact the C-section was already planned, and the patient was anesthetized and ready for surgery.

60. In her note, Dr. Jagannathan documented the following:

Drs. Turner and I discussed events surrounding STAT c-section and newborn status. We explained that after epidural placement, FHT were noted to be low and in the 80s. While preparing for STAT c-section, a US was placed and FHT were still unable to be confirmed.

61. Moreover, Nurse Fernandes noted that following the fetal heart rate deceleration to 60 bpm, there was difficulty in obtaining the fetal heart rate.

62. Nurse Fernandes further stated that the ultrasound was deferred, and Dr. Turner proceeded with an emergent C-section.

63. At 6:11 p.m., Dr. Turner requested via text message that Dr. Martin, a resident, report to the operating room to assist with the procedure due to the fetal bradycardia.

64. Dr. Turner further documented at 6:11 p.m. that he completed prepping and draping the patient.

65. At 6:12 p.m., Dr. Martin was reported to be in the operating room along with Nurse Jackson.

66. At 6:14 p.m., nearly ten minutes after the documented evidence of an abrupt deceleration to 60 bpm followed by a loss of the fetal heart rate, Dr. Turner made the first incision.

67. Baby Joshua was delivered at 6:17 p.m.

68. Baby Joshua was without oxygen for at least 13 minutes prior to his delivery.

69. At the time of delivery, Baby Joshua was limp, blue, and apneic.

70. Baby Joshua had an initial heart rate of less than 100 bpm.

71. Baby Joshua required resuscitation and intubation.

72. Baby Joshua's APGAR scores were 1 at one minute, 2 at five minutes, 2 at ten minutes, and 2 at fifteen minutes.

73. Blood gasses drawn at the time of delivery revealed severe metabolic acidosis.

74. Baby Joshua was intubated and transferred to the NICU.

75. At 10:05 p.m., Baby Joshua was transferred to St. Christopher's Hospital with an admitting diagnosis of severe hypoxic ischemic encephalopathy (HIE), respiratory failure, persistent pulmonary hypotension of the newborn (PPHN), left ventricular dysfunction, pulmonary hemorrhage, metabolic acidosis, presumed sepsis, hemodynamic instability, and hyperglycemia.

76. On January 12, 2018, Baby Joshua underwent genetic testing; the results of which came back as normal.

77. On February 2, 2018, Baby Joshua was discharged home.

78. At the time of his discharge, Baby Joshua's diagnosis was HIE, pulmonary hypertension, chronic lung disease, and horseshoe kidney.

79. The injuries that Baby Joshua sustained on December 13, 2017, were caused by the negligence and carelessness of the Defendants herein jointly and severally, and not by any act or omission on the part of Plaintiffs.

80. As a direct and proximate result of the prolonged oxygen deprivation suffered by Baby Joshua, which was caused by the negligence and carelessness of the Defendants herein, Baby Joshua was diagnosed with HIE, pulmonary hypertension, and chronic lung disease.

81. As a direct and proximate result of the injuries caused by the negligence and carelessness of the Defendants, Baby Joshua is severely, permanently, and profoundly disabled.

82. As a direct result of the injuries caused by the negligence and carelessness of the

Defendants, Baby Joshua has in the past and will continue to in the future to suffer physical, mental, psychological, and emotional pain, suffering, disfigurement, inconvenience, and embarrassment, and the loss of life's pleasures.

83. As a direct and proximate result of the injuries caused by the negligence and carelessness of the Defendants, Plaintiffs have been forced to expend and will continue to into the future to expend large sums of money for medical care, surgical care, custodial care, medications, and therapies.

84. As a direct and proximate result of the injuries caused by the negligence and carelessness of the Defendants, Baby Joshua has suffered a permanent and total impairment of his earnings and earning capacity, to his great financial detriment and loss, which continue permanently into the future.

THE CAUSES OF ACTION AND CLAIMS

COUNT I – NEGLIGENCE

PLAINTIFFS v. SAMANTHA JAGANNATHAN, M.D., AND SARAH MARTIN, M.D.

85. Plaintiffs hereby incorporate all paragraphs of this Complaint as through fully set forth at length herein.

86. Defendants were physicians at TUH who undertook to diagnose, treat and otherwise care for Plaintiff Andreza Lopez DaSilva and Baby Joshua in Labor & Delivery on or about December 13, 2017, in the course of their duties at TUH.

87. Defendants undertook the aforesaid care of Plaintiffs Andreza Lopez DaSilva and Baby Joshua with the knowledge and intention that Plaintiffs would rely on their opinions, training and experience in regard to medical care rendered to Plaintiffs during the course and care of their treatment in the Labor & Delivery Department at TUH on December 13, 2017.

88. Defendants undertook the aforesaid care of Plaintiffs for compensation rendered by

Plaintiffs or on their behalf.

89. Defendant Dr. Jagannathan held herself out to Plaintiffs and the public as an expert in obstetrics and gynecological medicine.

90. Defendant Dr. Martin held herself out to Plaintiffs and the public as an expert in obstetrics and gynecological medicine.

91. Defendants owed a duty of care to Plaintiffs and Baby Joshua, which was breached to their great detriment.

92. Defendants had a duty to provide medical care and treatment in a safe manner and in accordance with good and acceptable medical standards.

93. Defendants breached their duty of care to Plaintiffs and Baby Joshua by numerous acts and/or omissions, including but not limited to:

- a. Failure to emergently perform a C-section in the face of fetal distress and instead inexplicably delaying delivery, thereby placing Baby Joshua in imminent danger;
- b. Failure to take prompt and appropriate action upon the appearance of the signs and symptoms of fetal distress;
- c. Failure to take prompt and appropriate action upon the appearance of the signs and symptoms of fetal bradycardia;
- d. Failure to properly interpret and adequately respond to the non-reassuring fetal heart tracings;
- e. Failure to conduct appropriate and adequate fetal monitoring;
- f. Failure to appropriately and adequately interpret fetal heart tracings;
- g. Failure to consider the cause of Baby Joshua's fetal distress;
- h. Failure to adequately and properly generate and retain the appropriate medical records, including the fetal monitoring strips;

- i. Disregarding the rules, policies, protocols, standards, and procedures regarding fetal distress;
- j. Improperly delaying the delivery of Baby Joshua on December 13, 2017, when there was evidence of fetal distress;
- k. Failure to perform a timely C-section delivery in the face of the signs and symptoms of fetal distress;
- l. Failing to properly and adequately assess the condition of Baby Joshua;
- m. Failure to properly and adequately record and document the condition of Baby Joshua;
- n. Failure to diagnose the anoxic brain injury suffered by Baby Joshua during the labor and delivery process;
- o. Failure to treat the anoxic injuries sustained by Baby Joshua during the labor the delivery process;
- p. Failure to adequately assess Baby Joshua for injury to the brain;
- q. Disregarding the rules, policies, protocols, standards, and procedures regarding fetal monitoring;
- r. Disregarding the rules, policies, protocols, standards, and procedures regarding fetal distress; and
- s. Such other acts or omissions of negligence and/or carelessness which may become apparent during discovery or the trial of this case.

94. As a direct and proximate result of the negligence, carelessness, and/or recklessness of the Defendants as set forth above, Baby Joshua was caused to suffer injuries, losses, and damages, including:

- a. Severe Hypoxic Ischemic Encephalopathy (HIE);
- b. Metabolic acidosis;

- c. Respiratory failure;
- d. Persistent Newborn Pulmonary Hypertension (PPHN)
- e. Left ventricular systolic dysfunction;
- f. Pulmonary hemorrhage;
- g. Neonatal adrenal hemorrhage;
- h. Hemodynamic instability;
- i. Hyperglycemia; and
- j. Other severe and permanent injuries.

95. The negligence and carelessness of the Defendants, as described above, increased the risk of harm and was a proximate cause of the injuries and damages suffered by the minor Plaintiff, Joshua DaSilva.

96. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, sustained severe and permanent injuries, the full extent of which injuries are not yet known.

97. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, suffered severe pain, suffering, inconvenience, psychological pain, and has been deprived of life's pleasures.

98. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, has incurred and will continue to incur in the future, expenses for medical treatment and care, surgeries, therapies, and custodial care, for an indefinite period of time.

99. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, has suffered and will continue to suffer the loss of earnings and

earning capacity as a result of his disability for life.

WHEREFORE, Plaintiffs, individually and on behalf of their son, Joshua DaSilva, a minor, demand judgment against the Defendants, and each of them, jointly and severally, and in an amount in excess of \$50,000.00 in compensatory and punitive damages, together with interest, costs, attorneys' fees, and any other relief this Court deems just and proper.

COUNT II – NEGLIGENCE
PLAINTIFFS v. MICAELA FERNANDES, R.N.

100. Plaintiffs hereby incorporate all paragraphs of this Complaint as through fully set forth at length herein.

101. Defendant, Miacela Fernandes R.N., undertook to provide nursing care to the Plaintiffs, Andreza Lopez DaSilva and Baby Joshua, by and through her association with and/or employment by Defendant TUH.

102. Neither Plaintiff, Andreza Lopez DaSilva, nor Plaintiff Baby Joshua chose or requested the care of Nurse Fernandes, but rather looked to the Defendant TUH, and accepted the medical care and services provided by and at the Defendant TUH's agents, servants, employees and/or ostensible agents, including Nurse Fernandes.

103. Plaintiffs relied upon the medical knowledge, treatment, and advice of the Defendant Nurse Fernandes.

104. Defendant Nurse Fernandes undertook the care of the Plaintiffs for compensation rendered by the Plaintiffs or on their behalf.

105. Defendant Nurse Fernandes held herself out to the Plaintiffs and the public as experts in labor and delivery nursing care.

106. Defendants Nurse Fernandes owed a duty of care to the Plaintiffs, which was breached, causing severe and permanent injury to the minor Plaintiff, Joshua DaSilva.

107. The injuries to the minor Plaintiff, Joshua DaSilva, were the direct result of the negligence and carelessness of the Defendant Nurse Fernandes including, but not limited to the following:

- a. Failure to conduct appropriate and adequate fetal monitoring;
- b. Failure to appropriately and adequately interpret the fetal monitoring results;
- c. Failure to adequately respond to data recorded on the fetal monitor and tracings;
- d. Failure to take appropriate actions upon the appearance of the signs and symptoms of fetal distress;
- e. Failure to properly and adequately document the conditions of Plaintiff, Andreza Lopez DaSilva, and the minor Plaintiff, Joshua DaSilva and the medical and surgical treatments rendered, as required by the accepted rules, regulations, standards, guidelines, protocols, and procedures;
- f. Disregarding the rules, protocols, standards, and procedures regarding fetal monitoring;
- g. Disregarding the rules, policies, protocols, standards, and procedures regarding medical documentation;
- h. Disregarding the rules, policies, protocols, standards, and procedures regarding fetal distress;
- i. Improperly positioning Plaintiff Andreza Lopez DaSilva during the IV placement;
- j. Improperly administering 800 ml IV bolus of glucose where there is no physician's order for the glucose;
- k. Failure to take prompt and adequate action to ensure Plaintiffs were adequately treated and cared for by Defendant TUH physicians and Defendant TUH;
- l. Such other acts or omissions of negligence, carelessness and/or recklessness as may become apparent during the course of discovery or at the trial of this cause.

108. As a direct and proximate result of the negligence, carelessness, and/or recklessness of the Defendants as set forth above, Baby Joshua was caused to suffer injuries, losses, and damages, including:

- a. Severe Hypoxic Ischemic Encephalopathy (HIE);
- b. Metabolic acidosis;
- c. Respiratory failure;
- d. Persistent Newborn Pulmonary Hypertension (PPHN)
- e. Left ventricular systolic dysfunction;
- f. Pulmonary hemorrhage;
- g. Neonatal adrenal hemorrhage;
- h. Hemodynamic instability;
- i. Hyperglycemia; and
- j. Other severe and permanent injuries.

109. The negligence and carelessness of the Defendants, as described above, increased the risk of harm and was a proximate cause of the injuries and damages suffered by the minor Plaintiff, Joshua DaSilva.

110. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, sustained severe and permanent injuries, the full extent of which injuries are not yet known.

111. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, suffered severe pain, suffering, inconvenience, psychological pain, and has been deprived of life's pleasures.

112. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, has incurred and will continue to incur in the future, expenses for medical treatment and care, surgeries, therapies, and custodial care, for an indefinite period of time.

113. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, has suffered and will continue to suffer the loss of earnings and earning capacity as a result of his disability for life.

WHEREFORE, Plaintiffs, individually and on behalf of their son, Joshua DaSilva, a minor, demand judgment against the Defendants, and each of them, jointly and severally, and in an amount in excess of \$50,000.00 in compensatory and punitive damages, together with interest, costs, attorneys' fees, and any other relief this Court deems just and proper.

COUNT III - VICARIOUS LIABILITY
PLAINTIFFS v. TEMPLE UNIVERSITY HOSPITAL INC. A/K/A D/B/A
TEMPLE UNIVERSITY HOSPITAL, TEMPLE UNIVERSITY HEALTH SYSTEM,
INC., AND TEMPLE UNIVERSITY HOSPITAL DEPARTMENT
OF OBSTETRICS, GYNECOLOGY

114. Plaintiffs hereby incorporate all paragraphs of this Complaint as through fully set forth at length herein.

115. At all times relevant and material hereto, Defendants, Temple University Inc., a/k/a d/b/a Temple University Hospital, Temple University Health System, Inc., and Temple University Hospital Department of Obstetrics and Gynecology, acted through their agents, ostensible agents, staff, servants, employees, residents, physicians, fellows, medical students, nurse practitioners, nurses, physician assistants, technicians, and/or contractors, including Dr. Jagannathan, Dr. Martin, and Nurse Fernandes.

116. At all times relevant and material hereto, the agents, ostensible agents, staff, servants, employees, residents, physicians, fellows, medical students, nurse practitioners, nurses, physician assistants, technicians, and/or contractors, including Dr. Jagannathan, Dr. Martin, and Nurse Fernandes, were acting in the course and scope of their employment with Defendants Temple University Inc., a/k/a d/b/a Temple University Hospital, Temple University Health

System, Inc., and Temple University Hospital Department of Obstetrics and Gynecology.

117. Defendants are vicariously liable for the actions and inactions of their agents, ostensible agents, staff, servants, employees, residents, physicians, fellows, medical students, nurse practitioners, nurses, physician assistants, technicians, and/or contractors, including Dr. Jagannathan, Dr. Martin, and Nurse Fernandes.

118. The agents and ostensible agents of Defendants are identified in the medical records for Mrs. Lopez DaSilva and Baby Joshua DaSilva's admission to TUH on December 13, 2017 through December 14, 2017.

119. The injuries to the minor Plaintiff, Joshua DaSilva, were the direct result of the negligence and carelessness of the Defendants including, but not limited to the following:

- a. Failure to emergently perform a C-section in the face of fetal distress and instead inexplicably delaying delivery, thereby placing Baby Joshua in imminent danger;
- b. Failure to take prompt and appropriate action upon the appearance of the signs and symptoms of fetal distress;
- c. Failure to take prompt and appropriate action upon the appearance of the signs and symptoms of fetal bradycardia;
- d. Failure to properly interpret and adequately respond to the non-reassuring fetal heart tracings;
- e. Failure to conduct appropriate and adequate fetal monitoring;
- f. Failure to appropriately and adequately interpret fetal heart tracings;
- g. Failure to consider the cause of Baby Joshua's fetal distress;
- h. Failure to adequately and properly generate and retain the appropriate medical records, including the fetal monitoring strips;

- i. Failure to formulate, adopt, and enforce adequate rules, policies, protocols, standards, and procedures regarding the diagnosis and treatment of fetal distress;
- j. Disregarding the rules, policies, protocols, standards, and procedures regarding fetal distress;
- k. Improperly delaying the delivery of Baby Joshua on December 13, 2017, when there was evidence of fetal distress;
- l. Failure to perform a timely C-section delivery in the face of the signs and symptoms of fetal distress;
- m. Failing to properly and adequately assess the condition of Baby Joshua;
- n. Failure to properly and adequately record and document the condition of Baby Joshua;
- o. Failure to diagnose the anoxic brain injury suffered by Baby Joshua during the labor and delivery process;
- p. Failure to treat the anoxic injuries sustained by Baby Joshua during the labor the delivery process;
- q. Failure to adequately assess Baby Joshua for injury to the brain;
- r. Disregarding the rules, policies, protocols, standards, and procedures regarding fetal monitoring;
- s. Disregarding the rules, policies, protocols, standards, and procedures regarding fetal distress; and
- t. Disregarding the rules, policies, protocols, standards, and procedures regarding medical documentation;
- u. Disregarding the rules, policies, protocols, standards, and procedures regarding fetal distress;
- v. Improperly positioning Plaintiff Andreza Lopez DaSilva during the IV placement;
- w. Improperly administering 800 ml IV bolus of glucose where there is no

physician's order for the glucose;

- x. Such other acts or omissions of negligence and/or carelessness which may become apparent during discovery or the trial of this case.

120. As a direct and proximate result of the negligence, carelessness, and/or recklessness of the Defendants as set forth above, Baby Joshua was caused to suffer injuries, losses, and damages, including:

- a. Severe Hypoxic Ischemic Encephalopathy (HIE);
- b. Metabolic acidosis;
- c. Respiratory failure;
- d. Persistent Newborn Pulmonary Hypertension (PPHN)
- e. Left ventricular systolic dysfunction;
- f. Pulmonary hemorrhage;
- g. Neonatal adrenal hemorrhage;
- h. Hemodynamic instability;
- i. Hyperglycemia; and
- j. Other severe and permanent injuries.

121. The negligence and carelessness of the Defendants, as described above, increased the risk of harm and was a proximate cause of the injuries and damages suffered by the minor Plaintiff, Joshua DaSilva.

122. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, sustained severe and permanent injuries, the full extent of which injuries are not yet known.

123. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, suffered severe pain, suffering, inconvenience, psychological

pain, and has been deprived of life's pleasures.

124. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, has incurred and will continue to incur in the future, expenses for medical treatment and care, surgeries, therapies, and custodial care, for an indefinite period of time.

125. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, has suffered and will continue to suffer the loss of earnings and earning capacity as a result of his disability for life.

WHEREFORE, Plaintiffs, individually and on behalf of their son, Joshua DaSilva, a minor, demand judgment against the Defendants, and each of them, jointly and severally, and in an amount in excess of \$50,000.00 in compensatory and punitive damages, together with interest, costs, attorneys' fees, and any other relief this Court deems just and proper.

COUNT IV - CORPORATE NEGLIGENCE
PLAINTIFFS v. TEMPLE UNIVERSITY HOSPITAL INC. A/K/A D/B/A
TEMPLE UNIVERSITY HOSPITAL, TEMPLE UNIVERSITY HEALTH SYSTEM,
INC., AND TEMPLE UNIVERSITY HOSPITAL DEPARTMENT
OF OBSTETRICS, GYNECOLOGY

126. Plaintiffs hereby incorporate all paragraphs of this Complaint as through fully set forth at length herein.

127. Defendants Temple University Inc., a/k/a d/b/a Temple University Hospital, Temple University Health System, Inc., and Temple University Hospital Department of Obstetrics and Gynecology undertook the care of Mrs. Lopez DaSilva and Baby Joshua DaSilva with the knowledge and intention the Plaintiffs would rely on their opinions, training and experience, and that of agents, ostensible agents, staff, servants, employees, residents, physicians, fellows, medical students, nurse practitioners, nurses, physicians assistants, technicians and/or contractors in the medical care rendered to Plaintiffs during the course of their care and treatment.

128. Defendants undertook the aforesaid care and treatment of Mrs. Lopez DaSilva and Baby Joshua DaSilva for compensation rendered by Plaintiffs or on their behalf.

129. Defendants held themselves out to Plaintiffs and the public as a specialized university teaching hospital.

130. Defendants owed a duty of care to Plaintiffs which was breached to their great detriment.

131. Defendants had a duty to Plaintiffs to provide medical care and treatment in a safe manner and in accordance with good and acceptable medical standards.

132. Defendants breached its duty of care to Plaintiffs by numerous acts and/or omissions, including but not limited to:

- a. Failing to select and retain only competent physicians;
- b. Failing to select and retain only competent nurses;
- c. Failing to select and retain only competent physician's assistants;
- d. Failing to select and retain only competent residents;
- e. Failing to select and retain only competent fellows;
- f. Failing to select and retain only competent technicians;
- g. Failing to properly oversee all persons who practice medicine and nursing within the medical facility;
- h. Failing to formulate, adopt, and enforce appropriate rules, policies, and procedures, so as to ensure quality care for patients;
- i. Failing to properly train doctors, nurses, physician's assistants, and staff to properly care for patients;
- j. Failing to properly train doctors, nurses, physician's assistants, and staff to use due care under the circumstances;
- k. Failing to properly and appropriately supervise their agents, servants, employees and/or ostensible agents;

- l. Failing to properly train doctors, residents, fellows, nurses, physician's assistants, and staff to regarding fetal monitoring;
- m. Failing to properly doctors, residents, fellows, nurses, physician's assistants, and staff to react emergently where there is a deceleration followed by a loss of the baby's heart rate;
- n. Failing to properly train doctors, residents, fellows, nurses, physician's assistants, and staff to evaluate patients with evident fetal distress;
- o. Failing to properly train doctors, nurses, physician's assistants, and staff to properly monitor patients with evident fetal distress;
- p. Failing to properly train doctors, nurses, physician's assistants, and staff to take proper cognizance of the signs and symptoms of problems arising from fetal distress;
- q. Failing to properly train doctors, nurses, physician's assistants, and staff to communicate negative and/or poor outcomes to their patients regarding fetal distress;
- r. Failing to properly train doctors, nurses, physician's assistants, and staff to properly communicate critical patient information to other members of the medical team participating in the care and treatment of patients;
- s. Failing to formulate, adopt, and enforce adequate rules, procedures and policies to be followed by its physicians, fellows, residents, interns, students, physician's assistants, staff, personnel, nurses, nurse practitioners, technicians and/or independent contractors in connection with the monitoring, evaluation, diagnosis, and treatment and in general and in patients like Baby Joshua DaSilva and in particular with regard to fetal distress;
- t. Failing to formulate, adopt, and enforce policies and procedures about monitoring, and evaluating obstetrical patients;
- u. Failing to select and ensure that only competent and properly qualified, experienced and trained physicians, fellows, residents, interns, students, physician's assistants, staff, personnel, nurses, nurse practitioners, technicians and/or independent contractors diagnose, care for and treat patients with fetal distress;
- v. Failing to oversee, supervise and monitor all aspects of the care delivered by its physicians, fellows, residents, interns, students, physician's assistants, staff, personnel, nurses, nurse practitioners, technicians and/or independent contractors;

- w. Failing to oversee and review the competence, qualifications and experience of persons practicing medicine and aiding in the delivery of medical care within its practice as to patient care;
- x. Failing to maintain a safe and adequate medical practice for the care, protection and treatment of patients to ensure proper and timely diagnosis and treatment of the condition of patients and to ensure the timely and appropriate treatment of patient complaints;
- y. Failing to properly supervise, oversee, monitor, manage, control and review ongoing medical and nursing care and services being provided within the medical practice to avoid risks of harm and complications to its patients;
- z. Failing to have proper facilities, equipment and systems for the care of its patients;
- aa. Failing to employ appropriate methods of quality assurance; and
- bb. Failing to protect and safeguard the health and well-being of its patients, particularly Baby Joshua DaSilva.

133. Defendants Temple University Inc., a/k/a d/b/a Temple University Hospital, Temple University Health System, Inc., and Temple University Hospital Department of Obstetrics and Gynecology knew, or should have known, that the foregoing deviations and insufficiencies in their policies and procedures could cause injuries, damages and/or harm to Plaintiffs and/or increased the risk of Plaintiffs from suffering the injuries, damages, and harms more fully set forth herein and incorporated by reference.

134. Defendants foregoing deviations from accepted standards of care were factual causes of the injuries, damages and/or harm of Plaintiffs and/or increased the risks of Plaintiffs suffering the injuries, damages and/or harms more fully set forth herein and incorporated by reference.

WHEREFORE, Plaintiffs, individually and on behalf of their son, Joshua DaSilva, a minor, demand judgment against the Defendants, and each of them, jointly and severally, and in an amount in excess of \$50,000.00 in compensatory and punitive damages, together with interest,

costs, attorneys' fees, and any other relief this Court deems just and proper.

COUNT V – NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS
PLAINTIFFS v. ALL DEFENDANTS

135. Plaintiffs hereby incorporate all paragraphs of this Complaint as through fully set forth at length herein.

136. As a direct and proximate result of the negligence and carelessness of the Defendants, as more fully set forth hereinabove, Plaintiffs Andreza Lopez DaSilva and Jose DaSilva, were caused to see and experience first-hand the injury to their unborn child before, during, and after the labor and delivery.

137. As a direct and proximate result of the negligence, carelessness and/or recklessness of the Defendants, as more fully set forth hereinabove, Plaintiffs Andreza Lopez DaSilva and Jose DaSilva, being in the zone of danger and present, and experiencing the negligence and carelessness first-hand and observing the injuries to the minor Plaintiff, as they happened, suffered a severe and permanent emotional injury, distress, shock to their nervous system and psychiatric and psychological disorder, resulting in severe depression, anxiety, and post-traumatic stress disorder, which with psychological and psychiatric injuries they have suffered and will continue to suffer for an indefinite period of time into the future, to their great detriment and loss.

138. As a direct and proximate result of the negligence and carelessness of the Defendants, as more fully set forth hereinabove, Plaintiffs Andreza Lopez DaSilva and Jose DaSilva have been and will be required in the future, to expend money for medicine and medical attention, in an attempt to treat her severe emotional distress suffered as a result of the Defendants' acts.

WHEREFORE, Plaintiffs, individually and on behalf of their son, Joshua DaSilva, a minor, demand judgment against the Defendants, and each of them, jointly and severally, and in

an amount in excess of \$50,000.00 in compensatory and punitive damages, together with interest, costs, attorneys' fees, and any other relief this Court deems just and proper.

Respectfully submitted,

MESSA & ASSOCIATES, P.C.

By: /s/ Joseph L. Messa, Jr.
Joseph L. Messa, Jr.
Megan M. Kwak
Attorneys for Plaintiffs

Date: December 4, 2019

VERIFICATION

I, Andreza DaSilva, Plaintiff herein, make this Verification and state that the statements made in the foregoing are true and correct to the best of my knowledge, information, and belief.

I, the undersigned, understand that the statements therein are made subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.

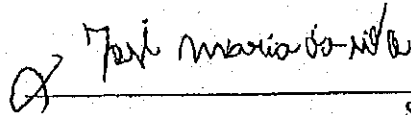
Andreza DaSilva
Signature

Dated: 12/04/19

VERIFICATION

I, Jose DaSilva, Plaintiff herein, make this Verification and state that the statements made in the foregoing are true and correct to the best of my knowledge, information, and belief.

I, the undersigned, understand that the statements therein are made subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.



Signature

Dated: 12/04/19

Exhibit “A”

MESSA & ASSOCIATES, P.C.
By: **Joseph L. Messa, Jr., Esquire**
Megan M. Kwak, Esquire
Attorney I.D. Nos.: 53645/313946
123 South 22nd Street
Philadelphia, Pa. 19103
(215) 568-3500 / Fax: (215) 568-3501

Attorneys for Plaintiff

**THIS IS NOT AN ARBITRATION
CASE. ASSESSMENT OF
DAMAGES HEARING IS
REQUIRED. MAJOR JURY.**

JOSHUA DA SILVA, by and through his
parents and legal guardians, **ANDREZA
LOPEZ DASILVA** and **JOSE DASILVA**

Plaintiffs,

vs.

TEMPLE UNIVERSITY HOSPITAL, INC.
a/k/a d/b/a **TEMPLE UNIVERSITY
HOSPITAL**
3401 N. Broad St.
Philadelphia, PA 19140

-and-

**TEMPLE UNIVERSITY HEALTH SYSTEM,
INC.**
3401 N. Broad St.
Philadelphia, PA 19140

-and-

**TEMPLE UNIVERSITY HOSPITAL
DEPARTMENT OF OBSTETRICS,
GYNECOLOGY**
3401 N. Broad St.
Philadelphia, PA 19140

-and-

SAMANTHA JAGANNATHAN, M.D.
3401 N. Broad St.
Philadelphia, PA 19140

-and-

CLINTON TURNER, M.D.
3401 N. Broad St.
Philadelphia, PA 19140

-and-

**PHILADELPHIA COUNTY
COURT OF COMMON PLEAS**

MAY TERM, 2019

No. _____

SARAH MARTIN, M.D.
3401 N. Broad St.
Philadelphia, PA 19140

-and-

MICAELA FERNANDEZ, R.N.
3401 N. Broad St.
Philadelphia, PA 19140

Defendants.

CERTIFICATE OF MERIT AS TO DEFENDANT TEMPLE UNIVERSITY HOSPITAL, INC.
a/k/a d/b/a TEMPLE UNIVERSITY HOSPITAL

I, Megan M. Kwak, Esquire, certify that:

An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the Complaint, deviated from or fell outside of acceptable professional standards, and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

The claim that the above Defendant deviated from acceptable professional standards is also based on allegations that other licensed professionals for whom these Defendants are responsible, and vicariously liable, deviated from acceptable professional standards and that an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

MESSA & ASSOCIATES, P.C.

By: /s/ Megan M. Kwak
Attorney for Plaintiffs

Dated: May 15, 2019

MESSA & ASSOCIATES, P.C.
By: Joseph L. Messa, Jr., Esquire
Megan M. Kwak, Esquire
Attorney I.D. Nos.: 53645/313946
123 South 22nd Street
Philadelphia, Pa. 19103
(215) 568-3500 / Fax: (215) 568-3501

JOSHUA DA SILVA, by and through his
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Plaintiffs,

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3401 N. Broad St.
Philadelphia, PA 19140

-and-

TEMPLE UNIVERSITY HEALTH SYSTEM,
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-and-

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3401 N. Broad St.
Philadelphia, PA 19140

-and-

CLINTON TURNER, M.D.
3401 N. Broad St.
Philadelphia, PA 19140

-and-

Attorneys for Plaintiff

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PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

MAY TERM, 2019

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Philadelphia, PA 19140

-and-

MICAELA FERNANDEZ, R.N.
3401 N. Broad St.
Philadelphia, PA 19140

Defendants.

**CERTIFICATE OF MERIT AS TO DEFENDANT TEMPLE UNIVERSITY
HEALTH SYSTEM, INC.**

I, Megan M. Kwak, Esquire, certify that:

An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the Complaint, deviated from or fell outside of acceptable professional standards, and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

The claim that the above Defendant deviated from acceptable professional standards is also based on allegations that other licensed professionals for whom these Defendants are responsible, and vicariously liable, deviated from acceptable professional standards and that an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

MESSA & ASSOCIATES, P.C.

By: /s/ Megan M. Kwak
Attorney for Plaintiffs

Dated: May 15, 2019

MESSA & ASSOCIATES, P.C.
By: **Joseph L. Messa, Jr., Esquire**
Megan M. Kwak, Esquire
Attorney I.D. Nos.: 53645/313946
123 South 22nd Street
Philadelphia, Pa. 19103
(215) 568-3500 / Fax: (215) 568-3501

Attorneys for Plaintiff

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parents and legal guardians, **ANDREZA
LOPEZ DASILVA** and **JOSE DASILVA**

Plaintiffs,

vs.

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a/k/a d/b/a **TEMPLE UNIVERSITY
HOSPITAL**
3401 N. Broad St.
Philadelphia, PA 19140

-and-

**TEMPLE UNIVERSITY HEALTH SYSTEM,
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3401 N. Broad St.
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-and-

**TEMPLE UNIVERSITY HOSPITAL
DEPARTMENT OF OBSTETRICS,
GYNECOLOGY**
3401 N. Broad St.
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-and-

SAMANTHA JAGANNATHAN, M.D.
3401 N. Broad St.
Philadelphia, PA 19140

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3401 N. Broad St.
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**PHILADELPHIA COUNTY
COURT OF COMMON PLEAS**

MAY TERM, 2019

No. _____

-and-

SARAH MARTIN, M.D.
3401 N. Broad St.
Philadelphia, PA 19140

-and-

MICAELA FERNANDEZ, R.N.
3401 N. Broad St.
Philadelphia, PA 19140

Defendants.

CERTIFICATE OF MERIT AS TO DEFENDANT TEMPLE UNIVERSITY HOSPITAL
DEPARTMENT OF OBSTETRICS, GYNECOLOGY

I, Megan M. Kwak, Esquire, certify that:

An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the Complaint, deviated from or fell outside of acceptable professional standards, and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

The claim that the above Defendant deviated from acceptable professional standards is also based on allegations that other licensed professionals for whom these Defendants are responsible, and vicariously liable, deviated from acceptable professional standards and that an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

MESSA & ASSOCIATES, P.C.

By: /s/ Megan M. Kwak
Attorney for Plaintiffs

Dated: May 15, 2019

MESSA & ASSOCIATES, P.C.
By: **Joseph L. Messa, Jr., Esquire**
Megan M. Kwak, Esquire
Attorney I.D. Nos.: 53645/313946
123 South 22nd Street
Philadelphia, Pa. 19103
(215) 568-3500 / Fax: (215) 568-3501

Attorneys for Plaintiff

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parents and legal guardians, ANDREZA
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Plaintiffs,

vs.

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3401 N. Broad St.
Philadelphia, PA 19140

-and-

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DEPARTMENT OF OBSTETRICS,
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-and-

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3401 N. Broad St.
Philadelphia, PA 19140

-and-

**PHILADELPHIA COUNTY
COURT OF COMMON PLEAS**

MAY TERM, 2019

No. _____

SARAH MARTIN, M.D.
3401 N. Broad St.
Philadelphia, PA 19140

-and-

MICAELA FERNANDEZ, R.N.
3401 N. Broad St.
Philadelphia, PA 19140

Defendants.

CERTIFICATE OF MERIT AS TO DEFENDANT SAMANTHA JAGANNATHAN, M.D.

I, Megan M. Kwak, Esquire, certify that:

An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the Complaint, deviated from or fell outside of acceptable professional standards, and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

The claim that the above Defendant deviated from acceptable professional standards is also based on allegations that other licensed professionals for whom these Defendants are responsible, and vicariously liable, deviated from acceptable professional standards and that an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

MESSA & ASSOCIATES, P.C.

Dated: May 15, 2019

By: /s/ Megan M. Kwak
Attorney for Plaintiffs

MESSA & ASSOCIATES, P.C.
By: Joseph L. Messa, Jr., Esquire
Megan M. Kwak, Esquire
Attorney I.D. Nos.: 53645/313946
123 South 22nd Street
Philadelphia, Pa. 19103
(215) 568-3500 / Fax: (215) 568-3501

Attorneys for Plaintiff

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**JOSHUA DA SILVA, by and through his
parents and legal guardians, ANDREZA
LOPEZ DASILVA and JOSE DASILVA**

**PHILADELPHIA COUNTY
COURT OF COMMON PLEAS**

Plaintiffs,

MAY TERM, 2019

vs.

No. _____

TEMPLE UNIVERSITY HOSPITAL, INC.
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3401 N. Broad St.
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-and-

SARAH MARTIN, M.D.
3401 N. Broad St.
Philadelphia, PA 19140

-and-

MICAELA FERNANDEZ, R.N.
3401 N. Broad St.
Philadelphia, PA 19140

Defendants.

CERTIFICATE OF MERIT AS TO DEFENDANT SARAH MARTIN, M.D.

I, Megan M. Kwak, Esquire, certify that:

An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the Complaint, deviated from or fell outside of acceptable professional standards, and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

The claim that the above Defendant deviated from acceptable professional standards is also based on allegations that other licensed professionals for whom these Defendants are responsible, and vicariously liable, deviated from acceptable professional standards and that an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

MESSA & ASSOCIATES, P.C.

By: /s/ Megan M. Kwak
Attorney for Plaintiffs

Dated: May 15, 2019

MESSA & ASSOCIATES, P.C.
By: Joseph L. Messa, Jr., Esquire
Megan M. Kwak, Esquire
Attorney LD. Nos.: 53645/313946
123 South 22nd Street
Philadelphia, Pa. 19103
(215) 568-3500 / Fax: (215) 568-3501

Attorneys for Plaintiff

**THIS IS NOT AN ARBITRATION
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JOSHUA DA SILVA, by and through his
parents and legal guardians, **ANDREZA
LOPEZ DASILVA** and **JOSE DASILVA**

Plaintiffs,

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3401 N. Broad St.
Philadelphia, PA 19140

-and-

CLINTON TURNER, M.D.
3401 N. Broad St.
Philadelphia, PA 19140

-and-

**PHILADELPHIA COUNTY
COURT OF COMMON PLEAS**

MAY TERM, 2019

No. _____

SARAH MARTIN, M.D.
3401 N. Broad St.
Philadelphia, PA 19140

-and-

MICAELA FERNANDEZ, R.N.
3401 N. Broad St.
Philadelphia, PA 19140

Defendants.

CERTIFICATE OF MERIT AS TO DEFENDANT MICAELA FERNANDEZ, R.N.

I, Megan M. Kwak, Esquire, certify that:

An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the Complaint, deviated from or fell outside of acceptable professional standards, and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

The claim that the above Defendant deviated from acceptable professional standards is also based on allegations that other licensed professionals for whom these Defendants are responsible, and vicariously liable, deviated from acceptable professional standards and that an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

MESSA & ASSOCIATES, P.C.

By: /s/ Megan M. Kwak
Attorney for Plaintiffs

Dated: May 15, 2019

EXHIBIT 2



1880 John F. Kennedy Boulevard
10th Floor
Philadelphia, PA 19103
t: 215.587.1600
f: 215.587.1699
w: www.burnswhite.com

Adrianna Yanez
Attorney at Law

(215) 587-1605
ayanez@burnswhite.com

January 17, 2020

VIA PROCESS SERVER

Clinton A. Turner, M.D.
Delaware Valley Community Health
401 W Allegheny Ave
Philadelphia PA 19133

Re: **DaSilva v. Temple et al.**
PCCP December Term, No: 1095

Dear Dr. Turner:

Enclosed please find a Joinder Complaint against you that was electronically filed with the Court on this date in the above-captioned matter. Please be guided accordingly.

Very truly yours,

A handwritten signature in black ink, appearing to read "Adrianna Yanez", with a stylized flourish at the end.

Adrianna Yanez

AMY/acc

Enclosure

cc: Joseph L. Messa, Esquire/Megan M. Kwak, Esquire
Colin Cherico, Esquire/ US Attorney's Office
Richard S. Margulies, Esquire

BURNS WHITE

By: James A. Young, Esq.

Richard S. Margulies, Esq.

Adrianna M. Yanez, Esq.

Attorney ID Nos. 00213/62306/309255

1880 John F. Kennedy Boulevard, 10th Floor

Philadelphia, PA 19103

215-587-1625/1628/1605

jayoung@burnswwhite.com

rsmargulies@burnswwhite.com

ayanez@burnswwhite.com

Attorneys For Defendants,
Filed and Attested by the
Temple University Hospital, Inc. d/b/a Temple University Health System
Temple University Hospital Department
of Obstetrics, Gynecology, Samantha
Jagannathan, M.D., Sarah Martin, M.D.
and Micaela Fernandes, R.N.

JD, by and through his
parents and legal guardians, ANDREZA LOPEZ
and JOSE DaSILVA

vs.

TEMPLE UNIVERSITY HOSPITAL, INC., et al

COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY

DECEMBER TERM, 2019
NO. 1095

**JOINDER COMPLAINT DIRECTED TO ADDITIONAL DEFENDANT,
CLINTON A. TURNER, M.D.**

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

PHILADELPHIA BAR ASSOCIATION
LAWYER REFERRAL AND INFORMATION SERVICE
One Reading Center
Philadelphia, Pennsylvania 19107
Telephone: 215-238-1701

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparecencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

ASOCIACION DE LICENCIADOS DE FILADELFA
SERVICIO DE REFERENCIA E INFORMACION LEGAL
One Reading Center
Filadelfia, Pennsylvania 19107
Telefono: 215-238-1701

BURNS WHITE

By: James A. Young, Esq.

Richard S. Margulies, Esq.

Adrianna M. Yanez, Esq.

Attorney ID Nos. 00213/62306/309255

1880 John F. Kennedy Boulevard, 10th Floor

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jayoung@burnswhite.com

rsmargulies@burnswhite.com

ayanez@burnswhite.com

Attorneys For Defendants,

Temple University Hospital, Inc. a/k/a

d/b/a Temple University Hospital,

Temple University Health System, Inc.,

Temple University Hospital Department

of Obstetrics, Gynecology, Samantha

Jagannathan, M.D., Sarah Martin, M.D.

and Micaela Fernandes, R.N.

JD, by and through his
parents and legal guardians, ANDREZA LOPEZ
and JOSE DaSILVA

vs.

TEMPLE UNIVERSITY HOSPITAL, INC., et al

COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY

DECEMBER TERM, 2019
NO. 1095

JOINDER COMPLAINT

Defendants, Temple University Hospital, Inc. a/k/a d/b/a Temple University Hospital, Temple University Health System, Inc., Temple University Hospital Department of Obstetrics, Gynecology, Samantha Jagannathan, M.D., Sarah Martin, M.D. and Micaela Fernandes, R.N. (hereinafter "Original Defendants") by and through their counsel, Burns White, hereby aver as follows:

1. Plaintiffs instituted this medical malpractice action by the filing of a Complaint on December 6, 2019. Service was effected on all named defendants on December 17, 2019 and January 8, 2020, along with certificates of merit. See Plaintiff's Complaint attached hereto as Exhibit "A".

2. This matter involves allegations of medical negligence with regard to care provided to Plaintiff, Andreza Lopez DaSilva on December 13, 2017, including with regard to the performance of a cesarean section. Plaintiffs aver that the Original Defendants' alleged failure to

properly and timely deliver Ms. Lopez DaSilva's baby led to the minor child suffering from severe Hypoxic Ischemic Encephalopathy, respiratory failure, hypertension and metabolic acidosis. See Exhibit "A."

3. Specifically, Plaintiffs allege that on December 13, 2017, Mrs. Lopez DaSilva presented to Temple University Hospital and came under the care of Clinton A. Turner, MD, among other hospital providers. See Exhibit "A."

4. Dr. Turner was Ms. Lopez DaSilva's attending physician during the hospital admission and performed the cesarean section on Ms. Lopez DaSilva. See Exhibit "A."

5. During the time that Dr. Turner was treating Ms. Lopez DaSilva, he was not an employee or agent of Original Defendants.

6. Original Defendants assert that if Plaintiffs' claims are proven, specifically for any care by Dr. Turner, all allegations being specifically denied, then Additional Defendant, Clinton A. Turner, MD, is solely liable on the Plaintiffs' cause of action for any negligent acts or omissions described in the Amended Complaint.

7. Original Defendants assert that if Plaintiffs' claims are proven, specifically for any care by Dr. Turner, all allegations being specifically denied, then Additional Defendant Clinton A. Turner, MD, is jointly or severally liable with the Original Defendants on the Plaintiffs' cause of action for any negligent acts or omissions described in the Amended Complaint.

WHEREFORE, Original Defendants Temple University Hospital, Inc. a/k/a d/b/a Temple University Hospital, Temple University Health System, Inc., Temple University Hospital Department of Obstetrics, Gynecology, Samantha Jagannathan, M.D., Sarah Martin, M.D. and Micaela Fernandes, R.N. allege that Additional Defendant Clinton A. Turner is alone liable to

Plaintiffs, jointly and/or severally liable to Plaintiffs, or is liable over to Original Defendants for contribution and/or indemnification, together with the appropriate costs and fees.

COUNT I: NEGLIGENCE
ORIGINAL DEFENDANTS V. CLINTON A TURNER, M.D.

8. Original Defendants incorporate the preceding paragraphs as though set forth at length herein.

9. Original Defendants also incorporate by reference the factual averments of Plaintiffs' Amended Complaint, with all allegations being specifically denied.

10. Original Defendants deny liability for the injuries alleged in Plaintiffs' Amended Complaint, the allegations of which are incorporated herein by reference. See Exhibit "A."

11. At all times relevant hereto Dr. Turner was not employed by Original Defendants, nor was he acting within the scope or course of their agency and employment while treating Ms. Lopez DaSilva and her unborn child.

12. According to Plaintiffs' Amended Complaint, Plaintiff's providers, including Dr. Turner negligently treated Ms. Lopez DaSilva and her unborn child as follows:

- a. Failure to emergently perform a C-section in the face of fetal distress and instead inexplicably delaying delivery, thereby placing Baby in imminent danger;
- b. Failure to take prompt and appropriate action upon the appearance of the signs and symptoms or fetal distress;
- c. Failure to take prompt and appropriate action upon the appearance of the signs and symptoms or fetal bradycardia;
- d. Failure to properly interpret and adequately respond to the non-reassuring fetal heart tracings;

- e. Failure to conduct appropriate and adequate fetal monitoring;
- f. Failure to appropriately and adequately interpret fetal heart tracings;
- g. Failure to consider the cause of Baby's fetal heart tracings;
- h. Failure to adequately and properly generate and retain the appropriate medical records, including the fetal monitoring strips;
- i. Disregarding the rules, policies, protocols, standards and procedures regarding fetal distress;
- j. Improperly delaying the delivery of Baby on December 113, 2019 when there was evidence of fetal distress;
- k. Failure to perform a timely C-section delivery in the face of the signs and symptoms of fetal distress;
- l. Failure to properly and adequately assess the condition of Baby;
- m. Failure to properly and adequately record and document the condition of Baby;
- n. Failure to diagnose the anoxic brain injury suffered by Baby during the labor and delivery process;
- o. Failure to treat the anoxic injuries sustained by Baby during the labor and delivery process;
- p. Failure to adequately assess Baby for injury to the brain;
- q. Disregarding the rules, policies, protocols, standards, and procedures regarding fetal monitoring;
- r. Disregarding the rules, policies, protocols, standards and procedures regarding fetal distress;

- s. Such other acts or omissions of negligence and/or carelessness which may become apparent during discovery or the trial of this case;

See Exhibit "A".

13. According to Plaintiffs' Complaint, as direct and proximate cause of the alleged negligence of Defendants, including Dr. Turner, Plaintiffs suffered severe and permanent injuries.

See Exhibit "A".

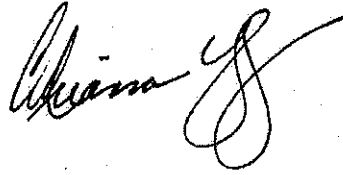
14. Original Defendants deny any and all liability, but if upon adjudication of the within cause of action, it is determined that negligence, carelessness, and/or lack of due care occurred, and did in some way cause Plaintiffs to experience injuries, Original Defendants aver that Additional Defendant is solely liable to Plaintiffs, or is jointly and/or severally liable with Original Defendants.

15. In the event Plaintiffs receive a judgment against Original Defendants on the within cause of action, then Additional Defendant is liable for said negligence, carelessness and/or lack of due care and is liable over to the Original Defendants by way of indemnity and/or contribution as the Court may find, for all or part of such sum as may be found against Original Defendants, by reason of said negligence, carelessness, and/or lack of due care of Additional Defendant.

WHEREFORE, Original Defendants Temple University Hospital, Inc. a/k/a d/b/a Temple University Hospital, Temple University Health System, Inc., Temple University Hospital Department of Obstetrics, Gynecology, Samantha Jagannathan, M.D., Sarah Martin, M.D. and Micaela Fernandes, R.N. allege that Additional Defendant Clinton A. Turner, MD is alone liable to Plaintiffs, jointly and/or severally liable to Plaintiffs, or is liable over to Original Defendants for contribution and/or indemnification, together with appropriate costs and fees.

Respectfully submitted,

BURNS WHITE

A handwritten signature in black ink, appearing to read "James A. Young", written over a horizontal line.

BY: _____

JAMES A. YOUNG, ESQUIRE
RICHARD S. MARGULIES, ESQUIRE
ADRIANNA YANEZ, ESQUIRE
Attorneys for Defendants
Temple University Hospital, Inc. a/k/a d/b/a
Temple University Hospital, Temple
University Health System, Inc., Temple
University Hospital Department of
Obstetrics, Gynecology, Samantha
Jagannathan, M.D., Sarah Martin, M.D.
and Micaela Fernandes, R.N.

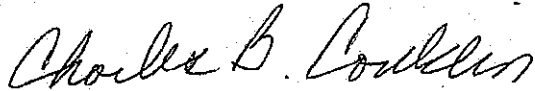
Date: January 17, 2020

VERIFICATION

Charles B. Conklin verifies that he is Associate Vice President of Risk Management for Temple University Hospital, Inc., and as such, is authorized to take this Verification on behalf of Defendant Temple University Hospital, Inc. in this action, that the factual averments contained in the foregoing Joinder Complaint against Additional Defendant Clinton A. Turner are true and correct to the best of my knowledge information and belief.

This Verification is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

Date: 1/16/20

A handwritten signature in cursive script, reading "Charles B. Conklin", written over a horizontal line.

CHARLES B. CONKLIN
Associate Vice President of Risk Management
Temple University Hospital, Inc.

CERTIFICATE OF SERVICE

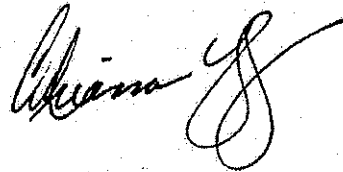
I, Adrianna Yanez, Esquire, do hereby certify that on this day I caused a true copy of the foregoing Joinder Complaint Directed to Additional Defendant, Clinton A. Turner, M.D. to be served as follows:

BY PROCESS SERVER

Clinton A. Turner, M.D.
Delaware Valley Community Health
401 W Allegheny Ave
Philadelphia PA 19133
Phone: 215-291-2500

BY THE COURT'S ELECTRONIC FILING

Joseph L. Messa, Esq.
Megan M. Kwak, Esq.
MESSA & ASSOCIATES, PC
123 South 22nd Street
Philadelphia, PA 19103



ADRIANNA YANEZ, ESQUIRE

DATE: January 17, 2020

Filed and Attested by the
Office of Judicial Records
17 JAN 2020 11:39 am
E. HAURIN

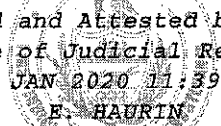
The seal of the District of Columbia Office of Judicial Records is a circular emblem. It features a central shield with a scale of justice and a sword. The words "OFFICE OF JUDICIAL RECORDS" are inscribed around the top inner edge of the circle, and "THE DISTRICT OF COLUMBIA" is inscribed around the bottom inner edge.

Exhibit A

Court of Common Pleas of Philadelphia County
Trial Division**Civil Cover Sheet**

For Prothonotary Use Only (Docket Number)

DECEMBER 2019**001095**

E-Filed Number: 1912017287

PLAINTIFF'S NAME ANDREZA L. DASILVA		DEFENDANT'S NAME TEMPLE UNIVERSITY HOSPITAL, INC., ALIAS: TEMPLE UNIVERSITY HOSPITAL	
PLAINTIFF'S ADDRESS 3305 OAKMONT STREET PHILADELPHIA PA 19136		DEFENDANT'S ADDRESS 3401 NORTH BROAD STREET PHILADELPHIA PA 19140	
PLAINTIFF'S NAME JOSE DASILVA		DEFENDANT'S NAME TEMPLE UNIVERSITY HEALTH SYSTEM, INC.	
PLAINTIFF'S ADDRESS 3305 OAKMONT STREET PHILADELPHIA PA 19136		DEFENDANT'S ADDRESS 3401 NORTH BROAD STREET PHILADELPHIA PA 19140	
PLAINTIFF'S NAME		DEFENDANT'S NAME TEMPLE UNIVERSITY HOSP. DEPARTMENT OF OBSTETRICS, GYNECOLOGY	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS 3401 NORTH BROAD STREET PHILADELPHIA PA 19140	
TOTAL NUMBER OF PLAINTIFFS 2	TOTAL NUMBER OF DEFENDANTS 6	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions	
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Mass Tort <input type="checkbox"/> Commerce <input type="checkbox"/> Settlement <input checked="" type="checkbox"/> Jury <input type="checkbox"/> Savings Action <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Minors <input type="checkbox"/> Non-Jury <input type="checkbox"/> Petition <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> W/D/Survival <input type="checkbox"/> Other:		
CASE TYPE AND CODE 2M - MALPRACTICE - MEDICAL			
STATUTORY BASIS FOR CAUSE OF ACTION			
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)		IS CASE SUBJECT TO COORDINATION ORDER? YES NO	
		FILED PRO PROTHY DEC 06 2019 A. SILIGRINI	
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: <u>ANDREZA L DASILVA , JOSE DASILVA</u> Papers may be served at the address set forth below.			
NAME OF PLAINTIFFS/PETITIONER'S/APPELLANT'S ATTORNEY JOSEPH L. MESSA JR		ADDRESS MESSA & ASSOCIATES PC 123 SOUTH 22ND STREET PHILADELPHIA PA 19103	
PHONE NUMBER (215) 568-3500	FAX NUMBER (215) 568-3501		
SUPREME COURT IDENTIFICATION NO. 53645		E-MAIL ADDRESS JMessa@Messalaw.com	
SIGNATURE OF FILING ATTORNEY OR PARTY JOSEPH MESSA JR		DATE SUBMITTED Friday, December 06, 2019, 12:23 pm	

FINAL COPY (Approved by the Prothonotary Clerk)

Case ID: 191201095

5

COMPLETE LIST OF DEFENDANTS:

1. TEMPLE UNIVERSITY HOSPITAL, INC. - accepted re 12/17/19
ALIAS: TEMPLE UNIVERSITY HOSPITAL
3401 NORTH BROAD STREET
PHILADELPHIA PA 19140
2. TEMPLE UNIVERSITY HEALTH SYSTEM, INC. - accepted re 12/17/19
3401 NORTH BROAD STREET
PHILADELPHIA PA 19140
3. TEMPLE UNIVERSITY HOSP. DEPARTMENT OF OBSTETRICS, GYNECOLOGY - accepted re 12/17/19
3401 NORTH BROAD STREET
PHILADELPHIA PA 19140
4. SAMANTHA JAGANNATHAN, M.D. - accepted re 12/17/19
3401 NORTH BROAD STREET
PHILADELPHIA PA 19140
5. SARAH MARTIN, M.D. - refused re 12/17/19
3401 NORTH BROAD STREET
PHILADELPHIA PA 19140
6. MICAELA FERNANDEZ, R.N. - accepted re 12/17/19
3401 NORTH BROAD STREET
PHILADELPHIA PA 19140

MESSA & ASSOCIATES, P.C.
 By: Joseph L. Messa, Jr., Esquire
 Megan M. Kwak, Esquire
 Attorney I.D. Nos.: 53645/313946
 123 South 22nd Street
 Philadelphia, Pa. 19103
 (215) 568-3500 / Fax: (215) 568-3501

Attorneys for Plaintiff and Accepted by the
 Office of Judicial Records
 THIS IS NOT AN ADVERTISEMENT
 CASE ASSESSMENT
 DAMAGES HEARING IS
 REQUIRED. MAJOR JURY.

JOSHUA DA SILVA, by and through his
 parents and legal guardians, **ANDREZA
 LOPEZ DASILVA** and **JOSE DASILVA**,

Plaintiffs

vs.

**TEMPLE UNIVERSITY HOSPITAL, INC.,
 a/k/a d/b/a TEMPLE UNIVERSITY
 HOSPITAL; TEMPLE UNIVERSITY
 HEALTH SYSTEM, INC.; TEMPLE
 UNIVERSITY HOSPITAL DEPARTMENT OF
 OBSTETRICS, GYNECOLOGY; SAMANTHA
 JAGANNATHAN, M.D.; SARAH MARTIN,
 M.D.; AND MICAELA FERNANDES, R.N.,**

Defendants.

**PHILADELPHIA COUNTY
 COURT OF COMMON PLEAS**

DECEMBER TERM, 2019

No. _____

**CIVIL ACTION COMPLAINT
 2M – PROFESSIONAL MEDICAL MALPRACTICE
 NOTICE TO DEFEND**

"NOTICE"

"You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

"YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP."

Philadelphia Bar Association
 Lawyer Referral
 and Information Service
 One Reading Center
 Philadelphia, PA 19107
 (215) 238-6333
 TTY (215) 451-6187

"AVISO"

"Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

"LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL."

Asociación de Licenciados
 de Filadelfia
 Servicio de Referencia e
 Información Legal
 One Reading Center
 Philadelphia, PA 19107
 (215) 238-6333
 TTY (215) 451-6187

MESSA & ASSOCIATES, P.C.
By: Joseph L. Messa, Jr., Esquire
Megan M. Kwak, Esquire
Attorney I.D. Nos.: 53645/313946
123 South 22nd Street
Philadelphia, Pa. 19103
(215) 568-3500 / Fax: (215) 568-3501

Attorneys for Plaintiff

**THIS IS NOT AN ARBITRATION
CASE. ASSESSMENT OF
DAMAGES HEARING IS
REQUIRED. MAJOR JURY.**

**JOSHUA DA SILVA, by and through his
parents and legal guardians, ANDREZA
LOPEZ DASILVA and JOSE DASILVA**

Plaintiffs,

vs.

TEMPLE UNIVERSITY HOSPITAL, INC.
a/k/a d/b/a TEMPLE UNIVERSITY
HOSPITAL
3401 N. Broad St.
Philadelphia, PA 19140

-and-

TEMPLE UNIVERSITY HEALTH
SYSTEM, INC.
3401 N. Broad St.
Philadelphia, PA 19140

-and-

TEMPLE UNIVERSITY HOSPITAL
DEPARTMENT OF OBSTETRICS,
GYNECOLOGY
3401 N. Broad St.
Philadelphia, PA 19140

-and-

SAMANTHA JAGANNATHAN, M.D.
3401 N. Broad St.
Philadelphia, PA 19140

-and-

**PHILADELPHIA COUNTY
COURT OF COMMON PLEAS**

DECEMBER TERM, 2019

No. _____

SARAH MARTIN, M.D.
3401 N. Broad St.
Philadelphia, PA 19140

-and-

MICAELA FERNANDES, R.N.
3401 N. Broad St.
Philadelphia, PA 19140

Defendants.

PLAINTIFFS' COMPLAINT
2M – PROFESSIONAL MEDICAL MALPRACTICE

Plaintiffs, Andreza Lopez DaSilva and Jose DaSilva, individually and on behalf of their son Joshua DaSilva, a minor, by and through their attorneys, Messa & Associates, P.C., bring the following Amended Complaint, and in support thereof aver as follows:

INTRODUCTION

1. On December 13, 2017, Plaintiffs were anxiously anticipating the birth of their fourth child, when they presented to Temple University Hospital for a scheduled C-section.
2. Mrs. Lopez DaSilva came under the care of Dr. Turner, Dr. Saperstein, and Nurse Fernandes.
3. When Plaintiffs presented to Labor and Delivery, there was evidence of a live, well-oxygenated fetus.
4. At approximately 3:30 p.m., during the placement of an IV by Nurse Fernandes, there was evidence of a prolonged 4-minute deceleration of Baby Joshua's heart rate to as low as 60 bpm.
5. Subsequently, Baby Joshua's heart rate recovered, and the electronic fetal monitor documented a Category I fetal heart tracing up until 5:43 p.m.

6. Sometime just before 5:48 p.m., Mrs. Lopez DaSilva was taken to the operating room for a repeat C-section.

7. At approximately 6:03 p.m., shortly after the administration of spinal anesthesia in the operating room, Defendants documented that Baby Joshua's heart rate dropped to a dangerously low bradycardic level of 60 beats per minute ("bpm").

8. By 6:05 p.m., Defendants could not detect Baby Joshua's heart rate at all.

9. Despite the evidence of fetal distress, and even though Mrs. Lopez DaSilva had been in the hospital for more than three (3) hours and there had been a prior bradycardic episode at approximately 3:30 p.m. that should have put Defendants on notice of a potential issue, and notwithstanding the fact Mrs. Lopez DaSilva was already in the operating room and anesthetized for her scheduled C-section, Defendants inexplicably delayed delivery for more than ten minutes and failed to take emergent action to get Baby Joshua out.

10. Finally, at 6:17 p.m., Baby Joshua was delivered.

11. But it was too late.

12. At delivery, Baby Joshua's lifeless body was flaccid and blue.

13. His initial heart rate was bradycardic at 64 bpm.

14. Baby Joshua's APGAR scores were 1 at one minute, 2 at five minutes, 2 at ten minutes, 2 at fifteen minutes, and 2 at twenty minutes.

15. He was emergently transferred to the NICU, where he underwent resuscitation and intubation before being transferred to St. Christopher's Hospital for Children for further evaluation and treatment.

16. Baby Joshua's injuries were the direct consequence of Defendants' failure to act promptly and emergently deliver Baby Joshua via C-section in the face of evident fetal distress.

17. Defendants' unfathomable decision to delay delivery for nearly 15 minutes needlessly deprived Baby Joshua's brain of oxygen.

18. Defendants' dangerous decision to delay delivery led to Baby Joshua's severe and permanent injuries.

19. Through this action, Plaintiffs Andreza Lopez DaSilva and Jose DaSilva seek compensatory and punitive damages on behalf of their minor son, Joshua DaSilva, who sustained severe, permanent, and profoundly disabling injuries at birth due to Defendants' failure to promptly deliver him in the face of evident fetal distress.

PARTIES

20. Plaintiffs **Andreza Lopez DaSilva and Jose DaSilva** are the parents and natural guardians of Joshua DaSilva, a minor, and reside at 3305 Oakmont Street, Philadelphia, PA 19136.

21. Defendant, **Temple University Hospital, Inc. a/k/a d/b/a Temple University Hospital ("TUH")**, is a Pennsylvania corporation, partnership, and/or other entity which provides training and instruction to medical students, interns, residents and fellows at Temple University Hospital operating and existing in accordance with the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 3401 N. Broad Street, Philadelphia, PA 19140.

22. At all relevant and material times, TUH acted by and through its directors, officers, shareholders, employees, physicians, nurses, staff members and/or its agents who were acting within the course and scope of their agency and/or within the right of its control, including the other named defendants herein and the physicians, residents, nurses and other staff responsible for the care and treatment of Joshua DaSilva on December 13, 2017.

23. At all relevant and material times, TUH was and is vicariously liable and/or ostensibly liable for the acts and/or omissions of its directors, officers, employees, physicians, nurses, staff members and/or its agents who were acting within the course and scope of its agency and/or within its right of control including, but not limited to Dr. Jagannathan, Dr. Martin, and Nurse Fernandes.

24. Plaintiffs are asserting professional liability and corporate negligence claims against TUH.

25. Defendant, Temple University Health System, Inc., is a Pennsylvania corporation, partnership, and/or other entity which provides training and instruction to medical students, interns, residents and fellows at Temple University Hospital operating and existing in accordance with the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 3401 N. Broad Street, Philadelphia, PA 19140.

26. At all relevant and material times, Temple University Health System, Inc., acted by and through its directors, officers, shareholders, employees, physicians, nurses, staff members and/or its agents who were acting within the course and scope of their agency and/or within the right of its control, including the other named defendants herein and the physicians, residents, nurses and other staff responsible for the care and treatment of Joshua DaSilva on December 13, 2017.

27. At all relevant and material times, Temple University Health System, Inc. was and is vicariously liable and/or ostensibly liable for the acts and/or omissions of its directors, officers, employees, physicians, nurses, staff members and/or its agents who were acting within the course and scope of its agency and/or within its right of control including, but not limited to Dr. Jagannathan, Dr. Martin, and Nurse Fernandes.

28. Plaintiffs are asserting professional liability and corporate negligence claims against Temple University Health System, Inc.

29. Defendant, **Temple University Hospital Department of Obstetrics & Gynecology**, is and was at all times relevant and material hereto, a Pennsylvania corporation, partnership, and/or other entity, organized and existing under the laws of the Commonwealth of Pennsylvania, engaged in the provision of medical and health care services with a principal place of business located at 3401 N. Broad Street, Philadelphia, PA 19140.

30. At all times relevant and material hereto Defendant, Temple University Hospital Department of Obstetrics & Gynecology, acted individually and/or by and through its agents, ostensible agents, staff, employees, residents, physicians, fellows, medical students, including Dr. Jagannathan, Dr. Martin, and Nurse Fernandes, and/or contractors who were acting with actual or implied authority to act within the course and scope of their employment and/or agency or ostensible agency relationship and the scope of their authority in the furtherance of the business and practice of Temple University Hospital Department of Obstetrics & Gynecology.

31. Plaintiffs are asserting a professional liability claim against Temple University Hospital Department of Obstetrics & Gynecology.

32. Defendant, **Samantha Jagannathan, M.D. ("Dr. Jagannathan")** is a physician who was licensed to practice medicine in the Commonwealth of Pennsylvania, having a regular place of business located at 3401 N. Broad Street, Philadelphia, PA 19140.

33. At all times relevant and material hereto, Dr. Jagannathan held herself out as a specialist in the field of Obstetrics and Gynecology and was engaged in the practice of his profession at TUH. At all times material hereto, Dr. Jagannathan was the agent, servant, employee

and/or ostensible agent of TUH, Temple University Health System, Inc., and/or Temple University Hospital Department of Obstetrics & Gynecology.

34. Plaintiffs are asserting a professional liability claim against Dr. Jagannathan.

35. Defendant, **Sarah Martin, M.D. ("Dr. Martin")** is a physician who was licensed to practice medicine in the Commonwealth of Pennsylvania, having a regular place of business located at 3401 N. Broad Street, Philadelphia, PA 19140.

36. At all times relevant and material hereto, Dr. Martin held herself out as a specialist in the field of Obstetrics and Gynecology and was engaged in the practice of his profession at TUH. At all times material hereto, Dr. Martin was the agent, servant, employee and/or ostensible agent of TUH, Temple University Health System, Inc., and/or Temple University Hospital Department of Obstetrics & Gynecology.

37. Plaintiffs are asserting a professional liability claim against Dr. Martin.

38. Defendant, **Micaela Fernandes, R.N.**, at all times relevant and material hereto, was a member of the Nursing staff of Defendant TUH who provided nursing care to Andreza Lopez DaSilva and Joshua DaSilva at Defendant TUH.

39. At all times relevant and material hereto, Defendant, Nurse Fernandes was an agent, employee, servant, workman, staff member, resident and/or ostensible agent of Defendant TUH, Temple University Health System, Inc., and/or Temple University Hospital Department of Obstetrics & Gynecology.

40. At all relevant and material times hereto, Andreza Lopez DaSilva and Joshua DaSilva were patients of Defendants.

41. An appropriate licensed professional has concluded that the care, skill, or knowledge exhibited by the Defendants, jointly and/or severally, deviated from or fell outside

professional standard and that such conduct was a substantial factor or increased the risk of harm to Plaintiffs. Certificates of Merit against the Defendants are attached collectively hereto as **Exhibit A.**

FACTUAL ALLEGATIONS

42. Plaintiffs hereby incorporate all paragraphs of this Complaint as through fully set forth at length herein.

43. On December 13, 2017, at approximately 3:00 p.m., Plaintiffs presented to TUH for a scheduled C-section of their fourth child, Joshua DaSilva.

44. At the time of her presentation, Mrs. Lopez DaSilva came under the care of Dr. Turner, the attending physician, Dr. Saperstein, a resident, and Nurse Fernandes.

45. During the placement of an IV at approximately 3:30 p.m. by Nurse Fernandes, there was evidence of a prolonged 4-minute deceleration of Baby Joshua's heart rate to as low as 60 bpm.

46. At approximately 4:00 p.m., Dr. Saperstein documented the incident as follows:

History of Present Illness

25 y.o. G4P3003@ 39w0d by 9w5d us admitted for repeat c-section. Patient reports good fetal movement. Denies vaginal bleeding, loss of fluid or contractions. Denies HA, visual changes or RUQ pain.

While being admitted and having IV drawn, patient had 4-minute fetal heart deceleration to the 60s, with spontaneous return to baseline with after repositioning. Patient at the time was lying down and started to feel warm but not lightheaded or dizzy.

47. Nurse Fernandes documented the incident in her nursing note, stating:

Attempted to place peripheral IV while patient lying on back with HOB at 30 degrees, placed spotlight on patient for better visualization, patient became tachycardic and diaphoretic. Loss of signal with FHR tracing and then prolonged FHR deceleration to 60. Patient's blood pressure within normal limits. Cousin at the bedside translating. Patient denied feeling dizzy and denied feeling like she was going to pass out. Patient rolled to right side and then left side, oxygen mask 10

liters placed. FHR returned to baseline. Dr. Saperstein at bedside. Dr. Turner made aware of event. Will start an IV NS fluid bolus. Will continue to monitor.

48. Dr. Turner further documented in his Attending Attestation note at 5:56 p.m. the following:

I saw and examined the patient and agree with the resident's note. 25 y.o. G4P3003 @ 39w0d by 9w5d us [sic] admitted for repeat c-section, BTL. OB history pertinent for SVD x 1 and C/S x 2. Patient reports good fetal movement. Denies vaginal bleeding, loss of fluid or contractions. Uncomplicated AP course. +vagal episode during IV placement. With associated fetal decel. That resolved [sic] with position change, IV hydration, and 02. Now with FHT's 150's/ cat. 1 tracing.

49. Subsequently, the electronic fetal monitor documented a Category I fetal heart tracing up until approximately 5:43 p.m.

50. Sometime just before 5:48 p.m., Defendants transported Mrs. Lopez DaSilva to the operating room for a repeat C-section.

51. Dr. Turner performed the C-section.

52. Dr. Jagannathan assisted Dr. Turner.

53. Nurse Fernandes was also present in the operating room at the time of the C-section.

54. At 5:58 p.m., Drs. Koers and Ligouri performed the insertion of spinal anesthesia without complication.

55. Prior to the administration of spinal anesthesia, Dr. Turner documented fetal heart tracings in the 130s.

56. Following the administration of the spinal anesthesia, Dr. Turner again documented fetal heart tracings in the 130s.

57. At 6:03 p.m., the anesthesia team reported "Anesthesia ready."

58. Shortly after 6:04 p.m., however, Dr. Turner noted that there was a spontaneous deceleration in which the fetal heart rate fell to a bradycardic level of as low as 60 bpm with a

small increase to the 80 bpm before subsequently becoming undetectable.

59. Defendants then inexplicably attempted to search for the fetal heart rate using an ultrasound wand despite the prior bradycardic event, the fact the C-section was already planned, and the patient was anesthetized and ready for surgery.

60. In her note, Dr. Jagannathan documented the following:

Drs. Turner and I discussed events surrounding STAT c-section and newborn status. We explained that after epidural placement, FHT were noted to be low and in the 80s. While preparing for STAT c-section, a US was placed and FHT were still unable to be confirmed.

61. Moreover, Nurse Fernandes noted that following the fetal heart rate deceleration to 60 bpm, there was difficulty in obtaining the fetal heart rate.

62. Nurse Fernandes further stated that the ultrasound was deferred, and Dr. Turner proceeded with an emergent C-section.

63. At 6:11 p.m., Dr. Turner requested via text message that Dr. Martin, a resident, report to the operating room to assist with the procedure due to the fetal bradycardia.

64. Dr. Turner further documented at 6:11 p.m. that he completed prepping and draping the patient.

65. At 6:12 p.m., Dr. Martin was reported to be in the operating room along with Nurse Jackson.

66. At 6:14 p.m., nearly ten minutes after the documented evidence of an abrupt deceleration to 60 bpm followed by a loss of the fetal heart rate, Dr. Turner made the first incision.

67. Baby Joshua was delivered at 6:17 p.m.

68. Baby Joshua was without oxygen for at least 13 minutes prior to his delivery.

69. At the time of delivery, Baby Joshua was limp, blue, and apneic.

70. Baby Joshua had an initial heart rate of less than 100 bpm.

71. Baby Joshua required resuscitation and intubation.

72. Baby Joshua's APGAR scores were 1 at one minute, 2 at five minutes, 2 at ten minutes, and 2 at fifteen minutes.

73. Blood gasses drawn at the time of delivery revealed severe metabolic acidosis.

74. Baby Joshua was intubated and transferred to the NICU.

75. At 10:05 p.m., Baby Joshua was transferred to St. Christopher's Hospital with an admitting diagnosis of severe hypoxic ischemic encephalopathy (HIE), respiratory failure, persistent pulmonary hypotension of the newborn (PPHN), left ventricular dysfunction, pulmonary hemorrhage, metabolic acidosis, presumed sepsis, hemodynamic instability, and hyperglycemia.

76. On January 12, 2018, Baby Joshua underwent genetic testing; the results of which came back as normal.

77. On February 2, 2018, Baby Joshua was discharged home.

78. At the time of his discharge, Baby Joshua's diagnosis was HIE, pulmonary hypertension, chronic lung disease, and horseshoe kidney.

79. The injuries that Baby Joshua sustained on December 13, 2017, were caused by the negligence and carelessness of the Defendants herein jointly and severally, and not by any act or omission on the part of Plaintiffs.

80. As a direct and proximate result of the prolonged oxygen deprivation suffered by Baby Joshua, which was caused by the negligence and carelessness of the Defendants herein, Baby Joshua was diagnosed with HIE, pulmonary hypertension, and chronic lung disease.

81. As a direct and proximate result of the injuries caused by the negligence and carelessness of the Defendants, Baby Joshua is severely, permanently, and profoundly disabled.

82. As a direct result of the injuries caused by the negligence and carelessness of the

Defendants, Baby Joshua has in the past and will continue to in the future to suffer physical, mental, psychological, and emotional pain, suffering, disfigurement, inconvenience, and embarrassment, and the loss of life's pleasures.

83. As a direct and proximate result of the injuries caused by the negligence and carelessness of the Defendants, Plaintiffs have been forced to expend and will continue to into the future to expend large sums of money for medical care, surgical care, custodial care, medications, and therapies.

84. As a direct and proximate result of the injuries caused by the negligence and carelessness of the Defendants, Baby Joshua has suffered a permanent and total impairment of his earnings and earning capacity, to his great financial detriment and loss, which continue permanently into the future.

THE CAUSES OF ACTION AND CLAIMS

COUNT I – NEGLIGENCE

PLAINTIFFS v. SAMANTHA JAGANNATHAN, M.D., AND SARAH MARTIN, M.D.

85. Plaintiffs hereby incorporate all paragraphs of this Complaint as through fully set forth at length herein.

86. Defendants were physicians at TUH who undertook to diagnose, treat and otherwise care for Plaintiff Andreza Lopez DaSilva and Baby Joshua in Labor & Delivery on or about December 13, 2017, in the course of their duties at TUH.

87. Defendants undertook the aforesaid care of Plaintiffs Andreza Lopez DaSilva and Baby Joshua with the knowledge and intention that Plaintiffs would rely on their opinions, training and experience in regard to medical care rendered to Plaintiffs during the course and care of their treatment in the Labor & Delivery Department at TUH on December 13, 2017.

88. Defendants undertook the aforesaid care of Plaintiffs for compensation rendered by

Plaintiffs or on their behalf.

89. Defendant Dr. Jagannathan held herself out to Plaintiffs and the public as an expert in obstetrics and gynecological medicine.

90. Defendant Dr. Martin held herself out to Plaintiffs and the public as an expert in obstetrics and gynecological medicine.

91. Defendants owed a duty of care to Plaintiffs and Baby Joshua, which was breached to their great detriment.

92. Defendants had a duty to provide medical care and treatment in a safe manner and in accordance with good and acceptable medical standards.

93. Defendants breached their duty of care to Plaintiffs and Baby Joshua by numerous acts and/or omissions, including but not limited to:

- a. Failure to emergently perform a C-section in the face of fetal distress and instead inexplicably delaying delivery, thereby placing Baby Joshua in imminent danger;
- b. Failure to take prompt and appropriate action upon the appearance of the signs and symptoms of fetal distress;
- c. Failure to take prompt and appropriate action upon the appearance of the signs and symptoms of fetal bradycardia;
- d. Failure to properly interpret and adequately respond to the non-reassuring fetal heart tracings;
- e. Failure to conduct appropriate and adequate fetal monitoring;
- f. Failure to appropriately and adequately interpret fetal heart tracings;
- g. Failure to consider the cause of Baby Joshua's fetal distress;
- h. Failure to adequately and properly generate and retain the appropriate medical records, including the fetal monitoring strips;

- i. Disregarding the rules, policies, protocols, standards, and procedures regarding fetal distress;
- j. Improperly delaying the delivery of Baby Joshua on December 13, 2017, when there was evidence of fetal distress;
- k. Failure to perform a timely C-section delivery in the face of the signs and symptoms of fetal distress;
- l. Failing to properly and adequately assess the condition of Baby Joshua;
- m. Failure to properly and adequately record and document the condition of Baby Joshua;
- n. Failure to diagnose the anoxic brain injury suffered by Baby Joshua during the labor and delivery process;
- o. Failure to treat the anoxic injuries sustained by Baby Joshua during the labor the delivery process;
- p. Failure to adequately assess Baby Joshua for injury to the brain;
- q. Disregarding the rules, policies, protocols, standards, and procedures regarding fetal monitoring;
- r. Disregarding the rules, policies, protocols, standards, and procedures regarding fetal distress; and
- s. Such other acts or omissions of negligence and/or carelessness which may become apparent during discovery or the trial of this case.

94. As a direct and proximate result of the negligence, carelessness, and/or recklessness of the Defendants as set forth above, Baby Joshua was caused to suffer injuries, losses, and damages, including:

- a. Severe Hypoxic Ischemic Encephalopathy (HIE);
- b. Metabolic acidosis;

- c. Respiratory failure;
- d. Persistent Newborn Pulmonary Hypertension (PPHN)
- e. Left ventricular systolic dysfunction;
- f. Pulmonary hemorrhage;
- g. Neonatal adrenal hemorrhage;
- h. Hemodynamic instability;
- i. Hyperglycemia; and
- j. Other severe and permanent injuries.

95. The negligence and carelessness of the Defendants, as described above, increased the risk of harm and was a proximate cause of the injuries and damages suffered by the minor Plaintiff, Joshua DaSilva.

96. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, sustained severe and permanent injuries, the full extent of which injuries are not yet known.

97. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, suffered severe pain, suffering, inconvenience, psychological pain, and has been deprived of life's pleasures.

98. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, has incurred and will continue to incur in the future, expenses for medical treatment and care, surgeries, therapies, and custodial care, for an indefinite period of time.

99. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, has suffered and will continue to suffer the loss of earnings and

earning capacity as a result of his disability for life.

WHEREFORE, Plaintiffs, individually and on behalf of their son, Joshua DaSilva, a minor, demand judgment against the Defendants, and each of them, jointly and severally, and in an amount in excess of \$50,000.00 in compensatory and punitive damages, together with interest, costs, attorneys' fees, and any other relief this Court deems just and proper.

COUNT II – NEGLIGENCE
PLAINTIFFS v. MICAELA FERNANDES, R.N.

100. Plaintiffs hereby incorporate all paragraphs of this Complaint as through fully set forth at length herein.

101. Defendant, Miacela Fernandes R.N., undertook to provide nursing care to the Plaintiffs, Andreza Lopez DaSilva and Baby Joshua, by and through her association with and/or employment by Defendant TUH.

102. Neither Plaintiff, Andreza Lopez DaSilva, nor Plaintiff Baby Joshua chose or requested the care of Nurse Fernandes, but rather looked to the Defendant TUH, and accepted the medical care and services provided by and at the Defendant TUH's agents, servants, employees and/or ostensible agents, including Nurse Fernandes.

103. Plaintiffs relied upon the medical knowledge, treatment, and advice of the Defendant Nurse Fernandes.

104. Defendant Nurse Fernandes undertook the care of the Plaintiffs for compensation rendered by the Plaintiffs or on their behalf.

105. Defendant Nurse Fernandes held herself out to the Plaintiffs and the public as experts in labor and delivery nursing care.

106. Defendants Nurse Fernandes owed a duty of care to the Plaintiffs, which was breached, causing severe and permanent injury to the minor Plaintiff, Joshua DaSilva.

107. The injuries to the minor Plaintiff, Joshua DaSilva, were the direct result of the negligence and carelessness of the Defendant Nurse Fernandes including, but not limited to the following:

- a. Failure to conduct appropriate and adequate fetal monitoring;
- b. Failure to appropriately and adequately interpret the fetal monitoring results;
- c. Failure to adequately respond to data recorded on the fetal monitor and tracings;
- d. Failure to take appropriate actions upon the appearance of the signs and symptoms of fetal distress;
- e. Failure to properly and adequately document the conditions of Plaintiff, Andreza Lopez DaSilva, and the minor Plaintiff, Joshua DaSilva and the medical and surgical treatments rendered, as required by the accepted rules, regulations, standards, guidelines, protocols, and procedures;
- f. Disregarding the rules, protocols, standards, and procedures regarding fetal monitoring;
- g. Disregarding the rules, policies, protocols, standards, and procedures regarding medical documentation;
- h. Disregarding the rules, policies, protocols, standards, and procedures regarding fetal distress;
- i. Improperly positioning Plaintiff Andreza Lopez DaSilva during the IV placement;
- j. Improperly administering 800 ml IV bolus of glucose where there is no physician's order for the glucose;
- k. Failure to take prompt and adequate action to ensure Plaintiffs were adequately treated and cared for by Defendant TUH physicians and Defendant TUH;
- l. Such other acts or omissions of negligence, carelessness and/or recklessness as may become apparent during the course of discovery or at the trial of this cause.

108. As a direct and proximate result of the negligence, carelessness, and/or recklessness of the Defendants as set forth above, Baby Joshua was caused to suffer injuries, losses, and damages, including:

- a. Severe Hypoxic Ischemic Encephalopathy (HIE);
- b. Metabolic acidosis;
- c. Respiratory failure;
- d. Persistent Newborn Pulmonary Hypertension (PPHN)
- e. Left ventricular systolic dysfunction;
- f. Pulmonary hemorrhage;
- g. Neonatal adrenal hemorrhage;
- h. Hemodynamic instability;
- i. Hyperglycemia; and
- j. Other severe and permanent injuries.

109. The negligence and carelessness of the Defendants, as described above, increased the risk of harm and was a proximate cause of the injuries and damages suffered by the minor Plaintiff, Joshua DaSilva.

110. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, sustained severe and permanent injuries, the full extent of which injuries are not yet known.

111. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, suffered severe pain, suffering, inconvenience, psychological pain, and has been deprived of life's pleasures.

112. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, has incurred and will continue to incur in the future, expenses for medical treatment and care, surgeries, therapies, and custodial care, for an indefinite period of time.

113. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, has suffered and will continue to suffer the loss of earnings and earning capacity as a result of his disability for life.

WHEREFORE, Plaintiffs, individually and on behalf of their son, Joshua DaSilva, a minor, demand judgment against the Defendants, and each of them, jointly and severally, and in an amount in excess of \$50,000.00 in compensatory and punitive damages, together with interest, costs, attorneys' fees, and any other relief this Court deems just and proper.

COUNT III - VICARIOUS LIABILITY
PLAINTIFFS v. TEMPLE UNIVERSITY HOSPITAL INC. A/K/A D/B/A
TEMPLE UNIVERSITY HOSPITAL, TEMPLE UNIVERSITY HEALTH SYSTEM,
INC., AND TEMPLE UNIVERSITY HOSPITAL DEPARTMENT
OF OBSTETRICS, GYNECOLOGY

114. Plaintiffs hereby incorporate all paragraphs of this Complaint as through fully set forth at length herein.

115. At all times relevant and material hereto, Defendants, Temple University Inc., a/k/a d/b/a Temple University Hospital, Temple University Health System, Inc., and Temple University Hospital Department of Obstetrics and Gynecology, acted through their agents, ostensible agents, staff, servants, employees, residents, physicians, fellows, medical students, nurse practitioners, nurses, physician assistants, technicians, and/or contractors, including Dr. Jagannathan, Dr. Martin, and Nurse Fernandes.

116. At all times relevant and material hereto, the agents, ostensible agents, staff, servants, employees, residents, physicians, fellows, medical students, nurse practitioners, nurses, physician assistants, technicians, and/or contractors, including Dr. Jagannathan, Dr. Martin, and Nurse Fernandes, were acting in the course and scope of their employment with Defendants Temple University Inc., a/k/a d/b/a Temple University Hospital, Temple University Health

System, Inc., and Temple University Hospital Department of Obstetrics and Gynecology.

117. Defendants are vicariously liable for the actions and inactions of their agents, ostensible agents, staff, servants, employees, residents, physicians, fellows, medical students, nurse practitioners, nurses, physician assistants, technicians, and/or contractors, including Dr. Jagannathan, Dr. Martin, and Nurse Fernandes.

118. The agents and ostensible agents of Defendants are identified in the medical records for Mrs. Lopez DaSilva and Baby Joshua DaSilva's admission to TUH on December 13, 2017 through December 14, 2017.

119. The injuries to the minor Plaintiff, Joshua DaSilva, were the direct result of the negligence and carelessness of the Defendants including, but not limited to the following:

- a. Failure to emergently perform a C-section in the face of fetal distress and instead inexplicably delaying delivery, thereby placing Baby Joshua in imminent danger;
- b. Failure to take prompt and appropriate action upon the appearance of the signs and symptoms of fetal distress;
- c. Failure to take prompt and appropriate action upon the appearance of the signs and symptoms of fetal bradycardia;
- d. Failure to properly interpret and adequately respond to the non-reassuring fetal heart tracings;
- e. Failure to conduct appropriate and adequate fetal monitoring;
- f. Failure to appropriately and adequately interpret fetal heart tracings;
- g. Failure to consider the cause of Baby Joshua's fetal distress;
- h. Failure to adequately and properly generate and retain the appropriate medical records, including the fetal monitoring strips;

- i. Failure to formulate, adopt, and enforce adequate rules, policies, protocols, standards, and procedures regarding the diagnosis and treatment of fetal distress;
- j. Disregarding the rules, policies, protocols, standards, and procedures regarding fetal distress;
- k. Improperly delaying the delivery of Baby Joshua on December 13, 2017, when there was evidence of fetal distress;
- l. Failure to perform a timely C-section delivery in the face of the signs and symptoms of fetal distress;
- m. Failing to properly and adequately assess the condition of Baby Joshua;
- n. Failure to properly and adequately record and document the condition of Baby Joshua;
- o. Failure to diagnose the anoxic brain injury suffered by Baby Joshua during the labor and delivery process;
- p. Failure to treat the anoxic injuries sustained by Baby Joshua during the labor the delivery process;
- q. Failure to adequately assess Baby Joshua for injury to the brain;
- r. Disregarding the rules, policies, protocols, standards, and procedures regarding fetal monitoring;
- s. Disregarding the rules, policies, protocols, standards, and procedures regarding fetal distress; and
- t. Disregarding the rules, policies, protocols, standards, and procedures regarding medical documentation;
- u. Disregarding the rules, policies, protocols, standards, and procedures regarding fetal distress;
- v. Improperly positioning Plaintiff Andreza Lopez DaSilva during the IV placement;
- w. Improperly administering 800 ml IV bolus of glucose where there is no

physician's order for the glucose;

- x. Such other acts or omissions of negligence and/or carelessness which may become apparent during discovery or the trial of this case.

120. As a direct and proximate result of the negligence, carelessness, and/or recklessness of the Defendants as set forth above, Baby Joshua was caused to suffer injuries, losses, and damages, including:

- a. Severe Hypoxic Ischemic Encephalopathy (HIE);
- b. Metabolic acidosis;
- c. Respiratory failure;
- d. Persistent Newborn Pulmonary Hypertension (PPHN)
- e. Left ventricular systolic dysfunction;
- f. Pulmonary hemorrhage;
- g. Neonatal adrenal hemorrhage;
- h. Hemodynamic instability;
- i. Hyperglycemia; and
- j. Other severe and permanent injuries.

121. The negligence and carelessness of the Defendants, as described above, increased the risk of harm and was a proximate cause of the injuries and damages suffered by the minor Plaintiff, Joshua DaSilva.

122. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, sustained severe and permanent injuries, the full extent of which injuries are not yet known.

123. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, suffered severe pain, suffering, inconvenience, psychological

pain, and has been deprived of life's pleasures.

124. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, has incurred and will continue to incur in the future, expenses for medical treatment and care, surgeries, therapies, and custodial care, for an indefinite period of time.

125. As a direct and proximate result of the Defendants' negligence and carelessness, minor Plaintiff, Joshua DaSilva, has suffered and will continue to suffer the loss of earnings and earning capacity as a result of his disability for life.

WHEREFORE, Plaintiffs, individually and on behalf of their son, Joshua DaSilva, a minor, demand judgment against the Defendants, and each of them, jointly and severally, and in an amount in excess of \$50,000.00 in compensatory and punitive damages, together with interest, costs, attorneys' fees, and any other relief this Court deems just and proper.

COUNT IV - CORPORATE NEGLIGENCE
PLAINTIFFS v. TEMPLE UNIVERSITY HOSPITAL INC. A/K/A D/B/A
TEMPLE UNIVERSITY HOSPITAL, TEMPLE UNIVERSITY HEALTH SYSTEM,
INC., AND TEMPLE UNIVERSITY HOSPITAL DEPARTMENT
OF OBSTETRICS, GYNECOLOGY

126. Plaintiffs hereby incorporate all paragraphs of this Complaint as through fully set forth at length herein.

127. Defendants Temple University Inc., a/k/a d/b/a Temple University Hospital, Temple University Health System, Inc., and Temple University Hospital Department of Obstetrics and Gynecology undertook the care of Mrs. Lopez DaSilva and Baby Joshua DaSilva with the knowledge and intention the Plaintiffs would rely on their opinions, training and experience, and that of agents, ostensible agents, staff, servants, employees, residents, physicians, fellows, medical students, nurse practitioners, nurses, physicians assistants, technicians and/or contractors in the medical care rendered to Plaintiffs during the course of their care and treatment.

128. Defendants undertook the aforesaid care and treatment of Mrs. Lopez DaSilva and Baby Joshua DaSilva for compensation rendered by Plaintiffs or on their behalf.

129. Defendants held themselves out to Plaintiffs and the public as a specialized university teaching hospital.

130. Defendants owed a duty of care to Plaintiffs which was breached to their great detriment.

131. Defendants had a duty to Plaintiffs to provide medical care and treatment in a safe manner and in accordance with good and acceptable medical standards.

132. Defendants breached its duty of care to Plaintiffs by numerous acts and/or omissions, including but not limited to:

- a. Failing to select and retain only competent physicians;
- b. Failing to select and retain only competent nurses;
- c. Failing to select and retain only competent physician's assistants;
- d. Failing to select and retain only competent residents;
- e. Failing to select and retain only competent fellows;
- f. Failing to select and retain only competent technicians;
- g. Failing to properly oversee all persons who practice medicine and nursing within the medical facility;
- h. Failing to formulate, adopt, and enforce appropriate rules, policies, and procedures, so as to ensure quality care for patients;
- i. Failing to properly train doctors, nurses, physician's assistants, and staff to properly care for patients;
- j. Failing to properly train doctors, nurses, physician's assistants, and staff to use due care under the circumstances;
- k. Failing to properly and appropriately supervise their agents, servants, employees and/or ostensible agents;

- l. Failing to properly train doctors, residents, fellows, nurses, physician's assistants, and staff to regarding fetal monitoring;
- m. Failing to properly doctors, residents, fellows, nurses, physician's assistants, and staff to react emergently where there is a deceleration followed by a loss of the baby's heart rate;
- n. Failing to properly train doctors, residents, fellows, nurses, physician's assistants, and staff to evaluate patients with evident fetal distress;
- o. Failing to properly train doctors, nurses, physician's assistants, and staff to properly monitor patients with evident fetal distress;
- p. Failing to properly train doctors, nurses, physician's assistants, and staff to take proper cognizance of the signs and symptoms of problems arising from fetal distress;
- q. Failing to properly train doctors, nurses, physician's assistants, and staff to communicate negative and/or poor outcomes to their patients regarding fetal distress;
- r. Failing to properly train doctors, nurses, physician's assistants, and staff to properly communicate critical patient information to other members of the medical team participating in the care and treatment of patients;
- s. Failing to formulate, adopt, and enforce adequate rules, procedures and policies to be followed by its physicians, fellows, residents, interns, students, physician's assistants, staff, personnel, nurses, nurse practitioners, technicians and/or independent contractors in connection with the monitoring, evaluation, diagnosis, and treatment and in general and in patients like Baby Joshua DaSilva and in particular with regard to fetal distress;
- t. Failing to formulate, adopt, and enforce policies and procedures about monitoring, and evaluating obstetrical patients;
- u. Failing to select and ensure that only competent and properly qualified, experienced and trained physicians, fellows, residents, interns, students, physician's assistants, staff, personnel, nurses, nurse practitioners, technicians and/or independent contractors diagnose, care for and treat patients with fetal distress;
- v. Failing to oversee, supervise and monitor all aspects of the care delivered by its physicians, fellows, residents, interns, students, physician's assistants, staff, personnel, nurses, nurse practitioners, technicians and/or independent contractors;

- w. Failing to oversee and review the competence, qualifications and experience of persons practicing medicine and aiding in the delivery of medical care within its practice as to patient care;
- x. Failing to maintain a safe and adequate medical practice for the care, protection and treatment of patients to ensure proper and timely diagnosis and treatment of the condition of patients and to ensure the timely and appropriate treatment of patient complaints;
- y. Failing to properly supervise, oversee, monitor, manage, control and review ongoing medical and nursing care and services being provided within the medical practice to avoid risks of harm and complications to its patients;
- z. Failing to have proper facilities, equipment and systems for the care of its patients;
- aa. Failing to employ appropriate methods of quality assurance; and
- bb. Failing to protect and safeguard the health and well-being of its patients, particularly Baby Joshua DaSilva.

133. Defendants Temple University Inc., a/k/a d/b/a Temple University Hospital, Temple University Health System, Inc., and Temple University Hospital Department of Obstetrics and Gynecology knew, or should have known, that the foregoing deviations and insufficiencies in their policies and procedures could cause injuries, damages and/or harm to Plaintiffs and/or increased the risk of Plaintiffs from suffering the injuries, damages, and harms more fully set forth herein and incorporated by reference.

134. Defendants foregoing deviations from accepted standards of care were factual causes of the injuries, damages and/or harm of Plaintiffs and/or increased the risks of Plaintiffs suffering the injuries, damages and/or harms more fully set forth herein and incorporated by reference.

WHEREFORE, Plaintiffs, individually and on behalf of their son, Joshua DaSilva, a minor, demand judgment against the Defendants, and each of them, jointly and severally, and in an amount in excess of \$50,000.00 in compensatory and punitive damages, together with interest,

costs, attorneys' fees, and any other relief this Court deems just and proper.

COUNT V – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
PLAINTIFFS v. ALL DEFENDANTS

135. Plaintiffs hereby incorporate all paragraphs of this Complaint as through fully set forth at length herein.

136. As a direct and proximate result of the negligence and carelessness of the Defendants, as more fully set forth hereinabove, Plaintiffs Andreza Lopez DaSilva and Jose DaSilva, were caused to see and experience first-hand the injury to their unborn child before, during, and after the labor and delivery.

137. As a direct and proximate result of the negligence, carelessness and/or recklessness of the Defendants, as more fully set forth hereinabove, Plaintiffs Andreza Lopez DaSilva and Jose DaSilva, being in the zone of danger and present, and experiencing the negligence and carelessness first-hand and observing the injuries to the minor Plaintiff, as they happened, suffered a severe and permanent emotional injury, distress, shock to their nervous system and psychiatric and psychological disorder, resulting in severe depression, anxiety, and post-traumatic stress disorder, which with psychological and psychiatric injuries they have suffered and will continue to suffer for an indefinite period of time into the future, to their great detriment and loss.

138. As a direct and proximate result of the negligence and carelessness of the Defendants, as more fully set forth hereinabove, Plaintiffs Andreza Lopez DaSilva and Jose DaSilva have been and will be required in the future, to expend money for medicine and medical attention, in an attempt to treat her severe emotional distress suffered as a result of the Defendants' acts.

WHEREFORE, Plaintiffs, individually and on behalf of their son, Joshua DaSilva, a minor, demand judgment against the Defendants, and each of them, jointly and severally, and in

an amount in excess of \$50,000.00 in compensatory and punitive damages, together with interest, costs, attorneys' fees, and any other relief this Court deems just and proper.

Respectfully submitted,

MESSA & ASSOCIATES, P.C.

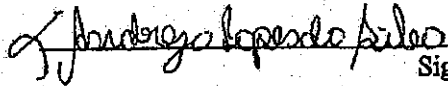
By: /s/ Joseph L. Messa, Jr.
Joseph L. Messa, Jr.
Megan M. Kwak
Attorneys for Plaintiffs

Date: December 4, 2019

VERIFICATION

I, Andreza DaSilva, Plaintiff herein, make this Verification and state that the statements made in the foregoing are true and correct to the best of my knowledge, information, and belief.

I, the undersigned, understand that the statements therein are made subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.

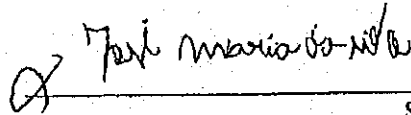

Signature

Dated: 12/04/19

VERIFICATION

I, Jose DaSilva, Plaintiff herein, make this Verification and state that the statements made in the foregoing are true and correct to the best of my knowledge, information, and belief.

I, the undersigned, understand that the statements therein are made subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.



Signature

Dated: 12/04/19

Exhibit “A”

MESSA & ASSOCIATES, P.C.
By: **Joseph L. Messa, Jr., Esquire**
Megan M. Kwak, Esquire
Attorney I.D. Nos.: 53645/313946
123 South 22nd Street
Philadelphia, Pa. 19103
(215) 568-3500 / Fax: (215) 568-3501

Attorneys for Plaintiff

**THIS IS NOT AN ARBITRATION
CASE. ASSESSMENT OF
DAMAGES HEARING IS
REQUIRED. MAJOR JURY.**

**JOSHUA DA SILVA, by and through his
parents and legal guardians, ANDREZA
LOPEZ DASILVA and JOSE DASILVA**

Plaintiffs,

vs.

TEMPLE UNIVERSITY HOSPITAL, INC.
a/k/a d/b/a TEMPLE UNIVERSITY
HOSPITAL
3401 N. Broad St.
Philadelphia, PA 19140

-and-

**TEMPLE UNIVERSITY HEALTH SYSTEM,
INC.**
3401 N. Broad St.
Philadelphia, PA 19140

-and-

**TEMPLE UNIVERSITY HOSPITAL
DEPARTMENT OF OBSTETRICS,
GYNECOLOGY**
3401 N. Broad St.
Philadelphia, PA 19140

-and-

SAMANTHA JAGANNATHAN, M.D.
3401 N. Broad St.
Philadelphia, PA 19140

-and-

CLINTON TURNER, M.D.
3401 N. Broad St.
Philadelphia, PA 19140

-and-

**PHILADELPHIA COUNTY
COURT OF COMMON PLEAS**

MAY TERM, 2019

No. _____

SARAH MARTIN, M.D.
3401 N. Broad St.
Philadelphia, PA 19140

-and-

MICAELA FERNANDEZ, R.N.
3401 N. Broad St.
Philadelphia, PA 19140

Defendants.

CERTIFICATE OF MERIT AS TO DEFENDANT TEMPLE UNIVERSITY HOSPITAL, INC.
a/k/a d/b/a TEMPLE UNIVERSITY HOSPITAL

I, Megan M. Kwak, Esquire, certify that:

An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the Complaint, deviated from or fell outside of acceptable professional standards, and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

The claim that the above Defendant deviated from acceptable professional standards is also based on allegations that other licensed professionals for whom these Defendants are responsible, and vicariously liable, deviated from acceptable professional standards and that an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

MESSA & ASSOCIATES, P.C.

By: /s/ Megan M. Kwak
Attorney for Plaintiffs

Dated: May 15, 2019

MESSA & ASSOCIATES, P.C.
By: Joseph L. Messa, Jr., Esquire
Megan M. Kwak, Esquire
Attorney I.D. Nos.: 53645/313946
123 South 22nd Street
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-and-

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3401 N. Broad St.
Philadelphia, PA 19140

Defendants.

**CERTIFICATE OF MERIT AS TO DEFENDANT TEMPLE UNIVERSITY
HEALTH SYSTEM, INC.**

I, Megan M. Kwak, Esquire, certify that:

An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the Complaint, deviated from or fell outside of acceptable professional standards, and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

The claim that the above Defendant deviated from acceptable professional standards is also based on allegations that other licensed professionals for whom these Defendants are responsible, and vicariously liable, deviated from acceptable professional standards and that an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

MESSA & ASSOCIATES, P.C.

By: /s/ Megan M. Kwak
Attorney for Plaintiffs

Dated: May 15, 2019

MESSA & ASSOCIATES, P.C.
By: **Joseph L. Messa, Jr., Esquire**
Megan M. Kwak, Esquire
Attorney I.D. Nos.: 53645/313946
123 South 22nd Street
Philadelphia, Pa. 19103
(215) 568-3500 / Fax: (215) 568-3501

Attorneys for Plaintiff

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3401 N. Broad St.
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-and-

MICAELA FERNANDEZ, R.N.
3401 N. Broad St.
Philadelphia, PA 19140

Defendants.

CERTIFICATE OF MERIT AS TO DEFENDANT TEMPLE UNIVERSITY HOSPITAL
DEPARTMENT OF OBSTETRICS, GYNECOLOGY

I, Megan M. Kwak, Esquire, certify that:

An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the Complaint, deviated from or fell outside of acceptable professional standards, and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

The claim that the above Defendant deviated from acceptable professional standards is also based on allegations that other licensed professionals for whom these Defendants are responsible, and vicariously liable, deviated from acceptable professional standards and that an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

MESSA & ASSOCIATES, P.C.

By: /s/ Megan M. Kwak
Attorney for Plaintiffs

Dated: May 15, 2019

MESSA & ASSOCIATES, P.C.
By: **Joseph L. Messa, Jr., Esquire**
Megan M. Kwak, Esquire
Attorney I.D. Nos.: 53645/313946
123 South 22nd Street
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Plaintiffs,

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3401 N. Broad St.
Philadelphia, PA 19140

-and-

MICAELA FERNANDEZ, R.N.
3401 N. Broad St.
Philadelphia, PA 19140

Defendants.

CERTIFICATE OF MERIT AS TO DEFENDANT SAMANTHA JAGANNATHAN, M.D.

I, Megan M. Kwak, Esquire, certify that:

An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the Complaint, deviated from or fell outside of acceptable professional standards, and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

The claim that the above Defendant deviated from acceptable professional standards is also based on allegations that other licensed professionals for whom these Defendants are responsible, and vicariously liable, deviated from acceptable professional standards and that an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

MESSA & ASSOCIATES, P.C.

Dated: May 15, 2019

By: /s/ Megan M. Kwak
Attorney for Plaintiffs

MESSA & ASSOCIATES, P.C.
By: Joseph L. Messa, Jr., Esquire
Megan M. Kwak, Esquire
Attorney I.D. Nos.: 53645/313946
123 South 22nd Street
Philadelphia, Pa. 19103
(215) 568-3500 / Fax: (215) 568-3501

Attorneys for Plaintiff

**THIS IS NOT AN ARBITRATION
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**JOSHUA DA SILVA, by and through his
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**PHILADELPHIA COUNTY
COURT OF COMMON PLEAS**

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MAY TERM, 2019

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-and-

SARAH MARTIN, M.D.
3401 N. Broad St.
Philadelphia, PA 19140

-and-

MICAELA FERNANDEZ, R.N.
3401 N. Broad St.
Philadelphia, PA 19140

Defendants.

CERTIFICATE OF MERIT AS TO DEFENDANT SARAH MARTIN, M.D.

I, Megan M. Kwak, Esquire, certify that:

An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the Complaint, deviated from or fell outside of acceptable professional standards, and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

The claim that the above Defendant deviated from acceptable professional standards is also based on allegations that other licensed professionals for whom these Defendants are responsible, and vicariously liable, deviated from acceptable professional standards and that an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

MESSA & ASSOCIATES, P.C.

Dated: May 15, 2019

By: /s/ Megan M. Kwak
Attorney for Plaintiffs

MESSA & ASSOCIATES, P.C.
By: Joseph L. Messa, Jr., Esquire
Megan M. Kwak, Esquire
Attorney LD. Nos.: 53645/313946
123 South 22nd Street
Philadelphia, Pa. 19103
(215) 568-3500 / Fax: (215) 568-3501

Attorneys for Plaintiff

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3401 N. Broad St.
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**PHILADELPHIA COUNTY
COURT OF COMMON PLEAS**

MAY TERM, 2019

No. _____

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3401 N. Broad St.
Philadelphia, PA 19140

-and-

MICAELA FERNANDEZ, R.N.
3401 N. Broad St.
Philadelphia, PA 19140

Defendants.

CERTIFICATE OF MERIT AS TO DEFENDANT MICAELA FERNANDEZ, R.N.

I, Megan M. Kwak, Esquire, certify that:

An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the Complaint, deviated from or fell outside of acceptable professional standards, and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

The claim that the above Defendant deviated from acceptable professional standards is also based on allegations that other licensed professionals for whom these Defendants are responsible, and vicariously liable, deviated from acceptable professional standards and that an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm and/or increasing the risk of harm.

MESSA & ASSOCIATES, P.C.

By: /s/ Megan M. Kwak
Attorney for Plaintiffs

Dated: May 15, 2019